

# **POA BY-LAWS AND COVENANTS**



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**THE GOLF CLUB AT BRIAR'S CREEK**

Prepared by: M. Jeffrey Vinzani, Esquire  
Nexsen Pruet Jacobs Pollard & Robinson, LLP  
Post Office Box 486  
Charleston, South Carolina 29402

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR THE GOLF CLUB AT BRIAR'S CREEK**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE GOLF CLUB AT BRIAR'S CREEK is made this 31<sup>st</sup> day of October, 2000, by BRIAR'S CREEK GOLF, LLC, a South Carolina limited liability company (the "Declarant"), EDWARD L. MYRICK ("Myrick") and STEVEN J. KOENIG ("Koenig").

**WITNESSETH**

WHEREAS, Declarant is the owner of certain real property located on John's Island, in the County of Charleston, South Carolina, and more particularly described as the Club Property in Exhibit "A," attached hereto and incorporated herein by this reference, which Declarant has agreed shall become a part of The Golf Club at Briar's Creek (hereinafter, "Community"); and

WHEREAS, Myrick is the owner of certain real property located on John's Island, in the County of Charleston, South Carolina, and more particularly described as the Myrick Tract in Exhibit "A," attached hereto and incorporated herein by this reference, which Myrick has agreed shall become a part of the Community; and

WHEREAS, Koenig is the owner of certain real property located on John's Island, in the County of Charleston, South Carolina, and more particularly described as the Koenig Tract in Exhibit "A," attached hereto and incorporated herein by this reference, which Koenig has agreed shall become a part of the Community; and

WHEREAS, the Community is planned to evolve into a country club and single-family, residential community under the planning ordinances adopted by the County of Charleston, South Carolina; and

WHEREAS, Declarant, Myrick and Koenig deem it to be in the best interest of the Community to be developed within the property more particularly described in Exhibit "A" as it exists today and as it will evolve in the future, to establish Covenants, Conditions and Restrictions to promote efficiencies and to provide a flexible mechanism for the administration and maintenance of community facilities, amenities and services which are for the common use and benefit of all the property owners.

NOW, THEREFORE, Declarant, Myrick and Koenig hereby declare that all of the property described in Exhibit "A" and any additional property as may be added by subsequent amendment hereto, and in accordance with the terms and conditions hereof, is subjected to this Declaration of Covenants, Conditions and Restrictions for The Golf Club at Briar's Creek, and will be held, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, restrictions, covenants, charges, liens, and conditions which are for the purpose of protecting the values and desirability of, and which will touch and concern and run with title to, the real properties subjected to this Declaration and which will be binding on all parties having any right, title, or

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interest in the described properties or any portion thereof, and their respective heirs, successors, successors-in-title, and assigns, and will inure to the benefit of each owner thereof.

#### ARTICLE 1. DEFINITIONS

1.1 Definitions. When used in this Declaration, unless the context will prohibit or otherwise require, the following words, will have all the following meanings, and all definitions will be applicable to the singular and plural forms of such terms:

(a) "Act" will mean and refer to the South Carolina Nonprofit Corporation Act of 1994, South Carolina Code Sections 33-31-101, et seq.

(b) "Additional Property" will mean and refer to the real property as may be added pursuant to Section 2.2, and all improvements thereon.

(c) "Architectural Review Board" will mean and refer to the board established herein to approve exterior and structural improvements, additions, and changes within the Community as provided in Article 6.

(d) "Articles of Incorporation" will mean and refer to the Articles of Incorporation of The Club at Briar's Creek Property Owners Association, as amended from time to time.

(e) "Assessment" will mean and refer to an Owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Community Association in the manner herein provided.

(f) "Community Association" will mean and refer to The Club at Briar's Creek Property Owners Association, a South Carolina not-for-profit corporation.

(g) "Board of Directors" or "Board" will mean and refer to the Board of Directors of the Community Association, which is the governing body of the Community Association.

(h) "By-Laws of the Community Association" or "By-Laws" will mean and refer to those By-Laws of The Club at Briar's Creek Property Owners Association, Inc., which govern the administration and operation of the Community Association, as may be amended from time to time. The form of By-Laws for the Community Association are attached hereto as Exhibit B and made a part hereof.

(i) "Club" will mean, as the context requires, the owner and the facilities of the Club Property, its golf course, driving range, clubhouse, golf maintenance area, and related golf facilities constructed, or to be constructed on the Club Property adjacent to or in proximity of the Residential Property, and owned and operated as further set forth in Article 3.

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(j) "Club Property" shall mean and refer to those areas designated on the Site Plan for the facilities of the Club.

(k) "Common Areas" will mean and refer to any and all real and personal property now or hereafter deeded or leased to, or which is the subject of a use agreement with, the Community Association, and wherein the property therein described is specifically denominated to be a part of the Common Areas, as well as such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenant, contract or agreement. The Common Areas may include a Community Association swimming pool, tennis courts, boardwalks, boat dock(s), private roads, streets, road and street shoulders and landscaping, guard house and entrance, pavilion, parking lots, open space, walkways, sidewalks, leisure trails, bike paths, street lighting, signage, and such maintenance and drainage areas, easements and utility service systems and lines, lagoons, and ponds as will be maintained by the Community Association, if any, and other areas and services set aside or provided for the common use and enjoyment of the Owners and Occupants of the Property. Common Areas will not, however, include the golf course, driving range and other golf related facilities designated by the Club. The designation of any land and/or improvements as a Common Area will not mean or imply that the public at large acquires any easement of use or enjoyment therein. Subject to the rights of the Club and the reservations to Declarant set forth herein, all Common Areas are to be devoted to and intended for the common use and enjoyment of the Declarant, Owners, and their respective guests, and visiting members of the general public (to the extent permitted by the Board of Directors, or required by the terms hereof or of any deed, lease, or use agreement) and subject to the fee schedules, if any, and operating rules adopted therefor. Any lands which are leased to, or are the subject of a use agreement with, the Community Association will lose their character as Common Areas upon the expiration of such lease or use agreement; provided, however, any such lease or use agreement between the Declarant and the Community Association will be extended in whole or in part, notwithstanding any termination provisions therein contained, to provide continued ingress and egress over the Community Association's private streets and roads to an Owner's property, subject to provisions for the payment of fees and costs for the maintenance of roadways by the Community Association; provided, further, an Owner's access will not be terminated for nonpayment, but the Declarant will have the same rights to file liens and the same remedies as the Community Association has pursuant to Sections 13.2 and 13.9 with respect to Assessments and Recreational Charges. THERE IS NO OBLIGATION ON THE DECLARANT OR THE COMMUNITY ASSOCIATION TO CONSTRUCT ANY IMPROVEMENTS WITHIN THE COMMON AREA.

(l) "Common Expenses" will mean and refer to all expenditures lawfully made or incurred by or on behalf of the Community Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration for the maintenance, repair and management of the Common Areas, and for the maintenance, repair and management of other property, whether owned by the Community Association or not and set forth in this Declaration or incorporated herein by a Supplemental Declaration, for which the Community Association has responsibility, such as providing, conducting, or maintaining water pollution and shoreline erosion abatement measures including, without limitation, the installation, maintenance and repair of shore revetments and groins pursuant to Article 12 hereof.

(m) "Community" will mean and refer to the Property (including any of the Additional Property subjected hereto as part of the Property) and all improvements located or constructed thereon, and being a part of the overall plan, from time to time existing hereunder, for the real estate development known as "The Golf Club at Briar's Creek."

(n) "Declarant" will mean and refer to Briar's Creek Golf, LLC, or any successor-in-title to the entire interest of such person with respect to the Property and the Additional Property at the time of such transfer to said successor-in-title, or any party designated Of Record to succeed to the rights of Declarant hereunder as to the matters set forth in such writing.

(o) "Declarant Control Period" means the time period commencing on the date of recording of this Declaration and ending on the earlier of:

(i) December 31, 2015; or

(ii) Three (3) months after the conveyance by the Declarant, in the ordinary course of business to persons other than a successor Declarant, of property representing ninety percent (90%) of the total number of Lots intended for development on all of the Property (including such portions of the Additional Property which become a part of the Property) as set forth in a Supplemental Declaration executed and Filed of Record by the Declarant on or before December 31, 2015, making specific reference to this Section; or

(iii) Three (3) months following the date the Declarant surrenders its authority to appoint directors of the Community Association pursuant to Section 16.1 below by an express amendment to this Declaration executed and Filed of Record by the Declarant.

Notwithstanding the foregoing to the contrary, the Declarant Control Period will not end prior to December 31, 2005.

(p) "Declaration" will mean and refer to this Declaration of Covenants, Conditions, and Restrictions for The Golf Club at Briar's Creek, as amended, from time to time, by any Supplemental Declaration filed Of Record.

(q) "Dependent Children" will mean and refer to any Person's unmarried, dependent children under the age of twenty-five (25) who are either living at home with such Person or attending school on a full time basis.

(r) "Dwelling" will mean and refer to any improved property intended for the use as a single-family detached dwelling, whether detached or attached, located within the Community.

(s) "Exclusive Common Area" will mean and refer to the portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Owners.

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(t) "Exclusive Common Area Expenses" will mean and refer to the costs and expenses of owning, maintaining, repairing and restoring an Exclusive Common Area, which are levied and assessed as an "Individual Assessment" pursuant to Section 13.8 against the Lots and Owners sharing, exclusively, such Exclusive Common Area.

(u) "Foreclosure" will mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the conveyance of secured property by a deed in lieu of a judicial foreclosure.

(v) "Institutional Mortgage" will mean and refer to a Mortgage held by a bank, trust company, insurance company, or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

(w) "Lease" will mean and refer to any lease, sublease, or rental contract, whether oral or written.

(x) "Living Space" will mean and refer to enclosed and covered areas within a Dwelling, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyard, greenhouses, atriums, bulk storage areas, attics, and basements.

(y) "Lot" will mean and refer to any unimproved portion of the Property upon which Dwelling Intended For Use as a single-family detached residence is constructed, as such Lot is shown on the Site Plan. A parcel of land will be deemed unimproved and thus considered to be a Lot, rather than a Dwelling, until the improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such parcel and the improvements thereon will collectively be considered to be a Dwelling for purposes of this Declaration.

(z) "Member" will mean and refer to all those Owners who are Members of the Community Association as defined in Section 8.1. As used herein, in capitalized form, the word "Member" will not include any Person, whether an Owner or not, who holds any form of membership, if any will ever be issued, in the Club.

(aa) "Mortgage" will mean and refer to a mortgage, security deed, deed of trust, installment land sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Lot and/or Dwelling.

(bb) "Mortgagee" will mean and refer to the holder of a Mortgage.

(cc) "Occupant" will mean and refer to any person, including, without limitation, any Owner or any guest, invitee, lessee, tenant, or family member of an Owner, occupying or otherwise using a Dwelling within the Community.

(dd) "Of Record" will mean recorded in the Register of Mesne Conveyance of Charleston County, South Carolina.

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(ee) "Owner" will mean and refer to one or more persons, including Declarant, who or which owns fee simple title to any Lot or Dwelling, however, excluding those persons having such an interest under a Mortgage. In the event that there is filed Of Record any installment land sales contract covering any Lot or Dwelling, the Owner thereof will be deemed to be the purchaser under the said contract and not the fee simple title holder. An installment land sales contract is an instrument whereby the purchaser is required to make payment for such property for a period extending beyond nine (9) months from the date of the contract, and where the purchaser does not receive title to such property until all such payments are made, although the purchaser is given use thereof.

(ff) "Person" will mean and refer to a natural person, corporation, partnership, association, trust, limited liability company or other legal entity, or any combination thereof.

(gg) "Property" will mean and refer to those tracts or parcels of land described on Exhibit "A," together with all improvements thereon, and, upon submission to the provisions of this Declaration, the Additional Property which may be added pursuant to Section 2.2, or any portion thereof, together with all improvements thereon.

(hh) "Recreational Amenities" will include such recreational facilities and improvements as are, from time to time, located within and are a part of a Common Area and the easement areas established pursuant to Section 7.9, and as are specifically designated in writing by the Declarant and/or the Community Association as Recreational Amenities, and may include such amenities as parks, swimming pools, tennis courts, lagoons, leisure trails, equestrian trails and pasture lands, bike paths, and mini-farms or garden plots, and such other facilities and services as may be designated by the Declarant and/or the Community Association from time to time for the use and benefit of the Owners of Lots and Dwellings, and subject to the conditions of use set forth in Section 7.3. THERE IS NO OBLIGATION ON THE DECLARANT OR THE COMMUNITY ASSOCIATION TO CONSTRUCT ANY RECREATIONAL AMENITIES.

(ii) "Recreational Assessment" will mean and refer to all fees, rentals, costs, and other charges which are charged by or to an Owner with respect to his use or the use by an Occupant of the Recreational Amenities or for the purchase of services or goods provided or sold in connection with the Recreational Amenities.

(jj) "Referendum" will mean and refer to the power of all or some specific portion of the Community Association Members to vote by mailed ballots on certain actions by the Board of Directors of the Community Association as more particularly set forth herein and/or in the By-Laws.

(kk) "Residential Property" shall mean and refer to those areas designated on the Site Plan as amended from time to time for Lots and Dwellings, including approximately 11 Lots within the Golf Course Property.



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(ll) "Site Plan" will mean and refer to that certain master plan prepared by Design Works, L.C., dated January 24, 2000 and entitled "Site Plan, Briar's Creek, John's Island, Charleston County, SC," and all modifications, revisions and additions thereto. Further, "Site Plan" will mean and refer to any subdivision plat of the Property or any portion of the Additional Property as may be submitted to the terms of this Declaration, and as may be placed Of Record in furtherance of the development scheme for the Community, as it exists from time to time.

(mm) "Supplemental Declaration" will mean and refer to any amendment to this Declaration filed Of Record, which subjects Additional Property to this Declaration or which makes any changes hereto.

(nn) "Tenant" will mean and refer to a Person holding a lease with an Owner of a Lot or Dwelling of twelve (12) months or more, or with respect to which there is a holding over on a month-to-month basis following the expiration of such minimum twelve (12) -month period.

## ARTICLE 2. THE GENERAL PLAN FOR THE GOLF CLUB AT BRIAR'S CREEK

2.1 Plan of Development of The Property. The Property is planned to initially contain approximately 60 Lots as shown on the Site Plan, and one Dwelling may be constructed on each such Lot. The Property, as may be supplemented by additions from the Additional Property, will also include the Common Areas, including Recreational Amenities, private roads, utility systems, drainage systems, and other improvements serving the Lots and Dwellings, to the extent the same are from time to time denominated as such by Declarant on the Site Plan or in any deed, lease, use agreement, Supplemental Declaration or memorandum thereof filed Of Record, and are installed and existing. The dimensions of Lots and other properties subjected hereto will be shown on the Site Plan, as the same may be amended from time to time. All Lots and Dwellings within the Community will be and are hereby restricted exclusively to single-family residential use and will be subject to the standards and restrictions set forth in Article 6 hereof. Without the consent of any person, Declarant will have the right, but not the obligation, during the Declarant Control Period, to make improvements and changes to all Common Areas, Recreational Amenities, and to all such properties owned by Declarant, including, without limitation, (a) installation and maintenance of any improvements, (b) changes in the location of the boundaries of any such properties owned by Declarant, (c) installation and maintenance of any water, sewer, and other utility systems and facilities and (d) installation of security and/or refuse facilities.

2.2 Additions To Property. Other property may become subject to this Declaration in the following manner:

2.2.1 Additions By Declarant. During the period of development, which will by definition extend from the date this Declaration is filed Of Record to December 31, 2015, the Declarant will have the right, without further consent of the Community Association to bring within the plan and operation of this Declaration, or to consent thereto, the whole or any portion of any real property near or adjacent to the Property, whether or not owned by the Declarant ("Additional Property"). Such property may be subjected to this Declaration as one parcel or as several smaller

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parcels at different times. The additions authorized under this subsection will be made by filing Of Record a Supplemental Declaration with respect to the Additional Property which will extend the operation and effect of the covenants and restrictions of the Declaration to such Additional Property, and which, upon filing Of Record of a Supplemental Declaration, will constitute a part of the Property.

(a) The Supplemental Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Declarant to reflect the different character, if any, of the Additional Property subjected to, and as are not materially inconsistent with, this Declaration, but such modifications will have no effect on the Property described in Section 2.1 above.

(b) The option reserved under this Section 2.2.1 may be exercised by Declarant only by the execution of a Supplemental Declaration filed Of Record, together with a revision of or an addition to the Site Plan showing the Additional Property or such portion or portions thereof as are being added to the Community by such amendment, as well as the Lots and Dwellings therein. Any such Supplemental Declaration will expressly submit the Additional Property or such portion thereof to all or a portion of the provisions of this Declaration, as may be provided therein, and such other covenants, restrictions, conditions and easements as Declarant, in its sole discretion, will determine.

**2.2.2 Other Additions.** Upon approval in writing of the Community Association pursuant to simple majority of the vote of those Members present, in person, by referendum or by proxy, at a duly called meeting, the owner of any property who desires to add it to the plan of this Declaration and to subject it to the jurisdiction of the Community Association, may file Of Record a Supplemental Declaration with respect to the property to be added, which will extend the operation and effect of the covenants and restrictions of the Declaration to such property, thereafter constituting a part of the Property.

**2.2.3 Additions By Merger.** Upon merger or consolidation of the Community Association with another association, as provided for in the Bylaws of the Community Association, its property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights, and obligations of another association may, by operation of law, be added to the properties of the Community Association as a surviving corporation pursuant to a merger. The surviving or consolidated Community Association may administer the existing property, together with the covenants and restrictions established upon any other properties, as one plan. No merger or consolidation will effect any revocation, change, or addition to the covenants established by this Declaration within the Property, including, without limitation, the maximum limits on Assessments and dues of the Community Association, or any other matter substantially affecting the interests of Members of the Community Association. Lands which become subject to this Declaration under the provisions of this Section 2.2.3 may in the future be referred to as a part of the Property.

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2.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Declarant Control Period for the purpose of removing any portion of the Property made a part hereof, from time to time, from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Community. Such amendment will not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Community Association will consent to such withdrawal.

2.4 Conveyances Of Common Areas. All parcels of land referred to herein which are denominated by Declarant as Common Areas will be deeded, leased, or a use agreement with respect thereto will be executed, by Declarant within two (2) years after the Declarant has completed improvements thereon, if such be required. Upon such conveyance, or upon completion of any improvements thereon by the Declarant, if such be required, the Community Association will immediately become responsible for all maintenance, operation and such additional construction of improvements as may be authorized by the Community Association's Board of Directors. For purposes of measuring the foregoing two (2) -year period, any such improvements will be deemed completed the later of the date all required certificates or permits of occupancy or use are issued therefor, or the date such improvements may be used in the manner and for the purposes for which they are constructed. It is the purpose of this provision to provide that the Community Association will be responsible for all maintenance of Common Areas upon which all improvements required to be made by the Declarant have been completed, notwithstanding the fact that the Declarant is not obligated to deed, lease or execute a use agreement for such properties until two (2) years after such improvements have been completed thereon. Any such conveyance by the Declarant will be conveyed subject to:

- (a) All restrictive covenants filed Of Record at the time of conveyance;
- and
- (b) All existing mortgages, provided, however, that in no event will the Community Association be obligated to assume the payment of principal or interest on any such mortgages; and
- (c) The right of access of the Declarant, its successors and assigns, over and across such property; and
- (d) The right of the Declarant, its successors and assigns, to approve all structures, construction, repairs, changes in elevation and topography and the location of any object (including vegetation) within the Common Areas prior to the commencement of such activities or location of any object therein;
- (e) All utilities and drainage easements; and
- (f) All reserved rights set forth in Section 2.1.

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The obligation to make payments of principal and interest in accordance with their due dates on all mortgages affecting property so conveyed to the Community Association will continue to be the sole obligation of the Declarant. Notwithstanding anything in the foregoing to the contrary, the Declarant, its successors and assigns, will not be required to so convey the Common Areas where such conveyance would be prohibited under agreements existing on the date of establishment of such Common Areas, but, in such case, Declarant will be allowed to postpone such conveyance, without a penalty, until such time as said prohibition may be nullified.

In consideration of the benefits accruing to the Community Association and to the Members under this Declaration and in consideration of the covenants and agreements of the Declarant hereunder, the Community Association hereby agrees to accept title to any property, or to any interest in property, now or hereafter conveyed to it pursuant to the terms and conditions of this Declaration. Upon the due recording of a deed, easement, lease or other instrument or memorandum of conveyance Of Record to the Community Association, title or such other interest in property conveyed will vest in and to the Community Association without the necessity of any further act, deed or approval of any person, including the grantor, lessor and/or Community Association.

2.5 Owner's Interest Subject to Plan of Development. Every purchaser of a Lot and Dwelling will purchase such property, and every Mortgagee and lienholder holding an interest therein will take title, or hold such security interest with respect thereto, with notice of Declarant's development rights as to the Additional Property as herein set forth, and Declarant will have and does hereby specifically reserve the right to add the Additional Property or any portion or portions thereof to the Community as hereinabove provided, and, with respect to each Lot and Dwelling located within the Additional Property, to convey to the purchaser thereof the title thereto and its appurtenant membership and voting rights in the Community Association. Any provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Declarant.

### ARTICLE 3. THE PLAN OF DEVELOPMENT OF THE CLUB

3.1 The Club Community. All Persons, including all Owners, hereby acknowledge that the Club will be owned by the Declarant, its successors and assigns, and not by the Association, and that the Club does not constitute Common Areas, except as specifically set forth in a use and access agreement by and between the Club and the Association, if any. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Declarant or any other Person with regard to the continuing ownership or operation of the golf course and related golf facilities as depicted upon any master land use plan, or marketing display or plat of the Club. No purported representation or warranty, written or oral, in such regard will ever be effective without an amendment hereto executed or joined into by the Club. Further, the ownership and/or operations of the Club facilities may change at any time and from time to time by virtue of, but without limitation, (a) the sale or assumption of operations of the Club to/by any person or entity, or (b) the operation thereof on a private, semi-private or public basis. As to any of the foregoing or any other

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alternative, no consent of the Association or any Owner shall be required to effectuate any transfer, for or without consideration and subject to or not subject to any mortgage, covenant, lien, or other encumbrance on the applicable land and other property. No Owner will have any ownership interest in the Club solely by virtue of his membership in the Association.

3.2 Restricted to Use as a Golf Club. The Club Property shall be restricted to use and operation as a golf course and golf club and related recreational or social activities. Additionally, the Club will have the right to hold special golf events at the Club which may result in the Club's facilities being unavailable, on a temporary basis, for use by the Owners. No part of the Club Property may be used for lodging purposes without the consent of all Owners; provided, however, construction of up to ten cottages (the "Club Cottages") in the Property, meaning residential dwellings which may be conveniently utilized as short term lodging for members of the Club and their guests. The Club intends to create a program whereby Club Cottages will be constructed by third parties and made available for rental by members of the Club; however, no assurance is provided that any Club Cottages will be constructed or made available to members of the Club on a temporary or permanent basis. The Club Cottages may not be made available to Members or Owners.

3.3 Landscaping, Fencing and Signage on the Golf Course. The Club shall have the right to place landscaping, signage, etc. at the boundary lines of the Club Property as reasonably necessary to prevent trespass, to regulate play on the Golf Course and to frame golf holes; provided, however, such landscaping, fencing, or signage, etc. shall not, in the reasonable opinion of Declarant, unreasonably obstruct any Owner's view of the Club's facilities from a Dwelling, subject to landscaping and vegetation required for framing holes as suggested by the golf course architect. The Club's approval enumerated under Section 3.9 shall also mandate the creation of buffers on Lots visible from the golf course; however such buffers will not constitute a "no cut" area but will require visual barriers to screen the Lots in accordance with good development practices to protect golf course quality of play.

3.4 Rights of Club Access and Parking. The Club and its members (regardless of whether such members are Owners hereunder), members of the public using Club facilities with the permission of the Club, and the Club's employees, agents, contractors, and designers will at all times have a right and nonexclusive easement of access and use over all roadways located within the Property reasonably necessary to travel to or from the entrance within the Property to or from the Club and, further, over those portions of the Property (whether Common Areas or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Club and its facilities. The within right of access and parking will be free and clear of any right of the Association to require payment of any toll charges for the use thereof under Section 6.3. Without limiting the generality of the foregoing, and anything contained herein to the contrary notwithstanding, members of the Club and permitted members of the public will have the right to park their vehicles on the roadways located within the Property at reasonable times before, during, and after golf and/or tennis tournaments and other special functions held by or at the Club.

3.5 Maintenance. The Club will cause the golf course and the other Club facilities to be maintained in a good condition including the cart paths, greens, fairways, tee boxes, bunkers and

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roughs as to planting, mowing, irrigation, raking, blowing, removal of debris and lake dredging and stabilization, etc. Such maintenance will include winter overseeding of fairways, tee boxes and greens.

### 3.6 Easements for the Benefit of the Club.

3.6.1 Retrieval of Golf Balls. The Club, its successors, assigns, members, if any, guests, and employees will have a perpetual, exclusive easement of access over the Property for the purpose of retrieving golf balls from bodies of water within the Common Areas, lying reasonably within range of golf balls hit from the Club's golf course. Furthermore, every property subject to this Declaration which is adjacent to a golf fairway, tee or green will be subject to the right and easement on the part of registered golf course players and their caddies to enter upon the unimproved portions of such property to remove a ball or to play a ball, subject to the official rules of the golf course, with such entering and playing not being deemed to be a trespass; provided, after a dwelling or other permanent structure is constructed thereon, such easement will be limited to the recovery of balls only, and not play. Notwithstanding the foregoing, golf course players or their caddies will not be entitled to enter on any such property with a golf cart or other vehicle, nor to spend an unreasonable amount of time on any such property, or in any way commit a nuisance while on any such property.

3.6.2 Overspray. Any portion of the Property immediately adjacent to the Club's facilities are hereby burdened with a nonexclusive easement in favor of the Club for overspray of water from the irrigation system serving the Club, as well as overspray of herbicides, fungicides and pesticides. Under no circumstances will the Declarant, the Club or the Association be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

3.6.3 Golf Course Maintenance Easement. There is hereby reserved for the benefit and use of the Club, and its invitees, agents, employees, successors, and assigns, the perpetual, nonexclusive right and easement over and across all unimproved portions of properties subject to this Declaration which are adjacent to the fairways, tees and greens of the golf course or courses located within the Community. This reserved right and easement will permit, but will not obligate the Club and its agents, employees, successors, and assigns, to go upon any such property to maintain or landscape the area encumbered by such easement. Such maintenance and landscaping will include planting of grass, watering, application of fertilizer, mowing, and the removal of underbrush, stumps, trash or debris, and trees of less than six (6) inches in diameter at a level of four and one-half (4½) feet above the ground level. The area encumbered by this easement will be limited to the portion of such properties within fifty (50') feet (or such lesser amount as approved by the Declarant) of those boundary lines of such properties which are adjacent to such fairways, tees or greens; provided, however, the entire unimproved portions of each such property will be subject to such easement until the landscaping plan for such property has been approved and implemented pursuant to Section 6.5.

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3.6.4 Club Facilities' Construction, Maintenance, Repair and Replacement. There is hereby reserved for the benefit and use of the Club, and its invitees, agents, employees, successors, and assigns, the perpetual, nonexclusive right and ingress, egress, access and construction easement over the Community's roadways and over those portions of the Common Areas reasonably necessary to the construction, operation, maintenance, repair and replacement of the Club's facilities.

3.7 Restrictions and Owners' Assumed Risks Related to the Club's Golf Course.

3.7.1 Distracting Activity by Owners Adjacent to Golf Course Prohibited. Owners of Lots and/or Dwellings adjacent to all golf course and practice range fairways, as well as their families, tenants, guests, invitees and pets will be obligated to refrain from any actions which would detract from the playing qualities of the Club's golf course or the development of an attractive overall landscaping plan for the Club's entire golf course area. Such prohibited actions will include, but are not limited to, such activities as the maintenance of unfenced dogs or other pets on the property of any Dwelling adjacent to the Club's golf course under conditions creating a nuisance or interfering with play. No fences will be allowed on the property of any Dwelling adjacent to the Club's golf course and practice range fairways. No pets will be allowed on the Club's golf course property at any time.

3.7.2 Assumed Inconveniences and Disturbances by Owners Adjacent to Golf Course. By the acceptance of a deed of conveyance to a Lot and/or Dwelling adjacent, or nearly adjacent, to the Club's golf facilities, each Owner acknowledges and agrees that along with the benefits derived from owning property near the Club's golf course, such Owner assumes the risks of (a) damage to property or injury to persons and animals from errant golf balls; (b) the entry by golfers onto Owner's property to retrieve golfballs pursuant to the easement set forth in Section 3.6.1 above (which such entry will not be deemed a nuisance or trespass); (c) possible overspray in connection with the irrigation and fertilization of the roughs, fairways, greens and tees of the Club's golf course and odors arising therefrom; (d) noise from golf course maintenance and operation equipment; (e) disturbance and loss of privacy resulting from golf cart traffic and golfers, and (f) activities associated with lake or lagoon and lagoon edge maintenance. Additionally, each Owner acknowledges and understands that herbicides, fungicides, pesticides and chemicals may be applied to the Club's golf course areas throughout the year, and that treated effluent or other sources of non-potable water may be used for the irrigation thereof.

3.7.3 Assumption of Risks by Owners Adjacent to Golf Course. Each Owner expressly assumes such detriments and risks, and agrees that neither Declarant, the Club, the Association, nor their successors or assigns will be liable to any Owner claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of, or damage to, property, trespass, or any other alleged wrongdoing or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of such Owner's Lot and/or Dwelling to the Club's facilities, including, without limitation, damage from errant golf balls landing upon any Lot and/or Dwelling, as well as any claim arising in whole or in part from the negligence of Declarant, the Club, the Association, and/or their invitees, agents, servants, successors and assigns, against any and all such claims by any Occupant, including claims

B/E 358PG263

of negligent design of the golf course, dwellings and negligent construction of improvements or location of improvements.

3.8 The Club Contribution to General Common Expenses. The Club hereby covenants to share costs with the Association whereby the Club will contribute twenty-five (25%) percent of the General Common Expenses of the Association.

3.9 The Club's Architectural Control. Neither the Association, Myrick, Koenig, or any committee or board thereof, will approve or permit any construction, addition, alteration, change, or installation on or to any portion of the Property that is adjacent to the Club's property without giving the Club at least fifteen (15) days' prior notice, in accordance with Section 16.15, of its intent to approve or permit same together with copies of the request therefor and all other documents and information finally submitted in such regard. The Club will then have fifteen (15) days to approve or disapprove the proposal in writing delivered to the appropriate party, committee or association, stating in detail the reasons for any disapproval. The failure of the Club to respond to the aforesaid notice within the fifteen (15) day period will constitute a waiver of the Club's right to object to the matter so submitted. This Section will also apply to any work on the Common Areas hereunder. The Club's approval enumerated hereunder shall also mandate the creation of buffers on Lots visible from the golf course; however such buffers will not constitute a "no cut" area but will require visual barriers to screen the Lots in accordance with good development practices to protect golf course quality of play.

3.10 Water Resources. The Club will control and maintain all lakes, ponds, lagoons or other such bodies of water located within and contiguous to the Club Property. The Club will own all such bodies of water within its property boundaries. All other portions of all lakes, ponds, lagoons or other such bodies of water located within the Property, including within any of the Additional Property subjected to this Declaration, will be Common Areas, owned and maintained by the Association, subject to the Club's exclusive right to use and draw water from all such bodies of water for irrigation and use on the Club Property. Additionally, the Club will own, control and maintain all wells, lines and pipes transmitting water to the bodies of water, and transmitting water from such bodies of water for Club irrigation, regardless of where located.

3.11 Declarant's Reserved Rights For Club. The Declarant expressly reserves unto itself, its successors and assigns, and unto the Association, the right to lease or grant easements over, across or under any Common Area to the Club for use as a portion of the Club's golf courses if such Common Area is adjacent to the Club Property.

3.12 Jurisdiction and Cooperation. It is Declarant's intention that the Association and the Club will cooperate to the maximum extent possible in the operation of the Property and the Club. Each will reasonably assist the other in upholding the community-wide standards herein provided as it pertains to maintenance and the design guidelines under Article 6.

3.13 Concurrent Development.



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(a) AS OF THE DATE THIS DECLARATION IS EXECUTED, THE DECLARANT, MYRICK AND KOENIG ARE SEPARATE AND DISTINCT ENTITIES AND INDIVIDUALS. IN ADDITION, AS OF THE DATE THIS DECLARATION IS EXECUTED, IT IS THE INTENTION OF DECLARANT, MYRICK AND KOENIG THAT THE GOLF COURSE AND RELATED GOLF FACILITIES SHALL BE A SEPARATELY OWNED, SEPARATE AND DISTINCT FROM THE ASSOCIATION AND MYRICK AND KOENIG. THE GOLF COURSE AND THE GOLF COURSE ENVELOPE SHALL NOT BE PART OF THE COMMON PROPERTY AND NEITHER THE ASSOCIATION NOR ANY OWNER SHALL HAVE ANY RIGHT IN AND TO THE GOLF COURSE OR THE AMENITIES CONTAINED THEREIN, INCLUDING THE RIGHT TO ENTER UPON OR USE THE GOLF COURSE FACILITIES, EXCEPT FOR SUCH RIGHTS, IF ANY, GRANTED TO THE GENERAL PUBLIC.

(b) WHILE DECLARANT HAS MADE REASONABLE EFFORTS TO ENSURE THAT THE GOLF COURSE WILL BE DEVELOPED, OWNED AND OPERATED IN THE MANNER DESCRIBED HEREIN, NEITHER THE DECLARANT NOR MYRICK NOR KOENIG IS UNDER AN OBLIGATION TO DEVELOP A GOLF COURSE, AND NONE OF THEM GUARANTEES THAT A GOLF COURSE OR GOLF CLUB WILL CONTINUE TO BE OPERATED WITHIN THE GOLF COURSE ENVELOPE.

#### ARTICLE 4. PLAN OF DEVELOPMENT OF THE CONTIGUOUS BRIAR'S CREEK, MARSH AND PONDS

4.1 Docks and Bulkheads. Owners of Lots facing the Briar's Creek and other related estuaries and associated marsh will, upon approval of the Architectural Review Board and issuance of any applicable construction permit, be permitted to erect docks (and bulkheads where appropriate in the discretion of the Declarant) upon their Lots in accordance with the following:

4.1.1 Plans and Specifications: Siting. Complete plans and specifications including, color or finish must be submitted to the Architectural Review Board in writing for approval in accordance with Article 6, and must conform to the architectural guidelines therefor adopted by the Architectural Review Board, including, but not limited to, requirements concerning permitted lighting, maximum lengths, square footage, slopes, and other matters which may apply to the aesthetics of such construction of docks on Briar's Creek. Docks will only be constructed within such area established therefor by the Architectural Review Board pursuant to such approvals of the Office of Ocean and Coastal Resource Management of the South Carolina Department of Health and Environmental Control ("OCHRM"), formerly the South Carolina Coastal Council, with regard to the Dock Master Plan (or other plan), if any, for the Community (a copy of which is maintained at the offices of the Declarant).

4.1.2 Architectural Approval of Docks. Written approval of the Architectural Review Board to such plans and specifications must be secured, the Architectural Review Board being granted the right in its sole discretion to disapprove such plans and specifications on any grounds, including purely aesthetic reasons.

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4.1.3 Agency Approval of Docks; Dock Permit. Owners will comply with all applicable governmental regulations, laws and ordinances for obtaining approval from agencies having approval authority. No representation is made by Declarant that any such agency approval will be granted, nor will any such representation be inferred from the matters set forth herein. Any applicable Dock Master Plan (or other plan) for the Community and the establishment of dock corridor lines thereon are intended solely as a means to promote Declarant's plan of development to maintain and enhance responsible conservation and recreational opportunities, and do not constitute a covenant, guaranty or warranty to any Owner that required agency approval will be granted. Declarant reserves the right to adjust any applicable dock corridor line now or hereafter established if such adjustment is deemed by Declarant to be warranted to give full effect to its development plan.

4.1.4 Alteration of Docks. Any alterations of the plans and specifications or of the completed structure must also be submitted to the Architectural Review Board in writing and the Architectural Review Board's approval in writing must be similarly secured prior to construction, the Architectural Review Board being granted the same rights to disapprove alterations as it retains for disapproving the original structures.

4.1.5 Adjoining Lots' Joint-Use Docks. In the event the Declarant and/or OCRM will require that a single, fixed-pier and one or two floating docks be owned and their use shared privately by two adjoining Lot Owners, such fixed pier and any single-use floating dock will constitute a party structure, and to the extent consistent with the provisions of this Article 4, the general rules of law regarding party walls and liability for damages due to negligence and wilful acts or omissions will apply. If one Owner constructs, at his sole cost and expense, the fixed pier and any required joint-use gangway and floating dock, the use thereof by an adjoining Lot Owner, restricted to joint use by OCRM, will be conditioned upon contribution of one-half (½) of the costs and expenses of construction thereof by the other Lot Owner. The adjoining Owners of such joint-use docks will share equally the cost of reasonable repair and maintenance of the fixed pier and, unless each such Owner has his own gangway and floating dock attached thereto, the cost of reasonable repair and maintenance of the shared gangway and floating dock. If the applicable party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds thereof, either Owner may restore the structure; and if the other Owner wishes to make use thereof, the other Owner will contribute one-half (½) the cost of such restoration. Contribution for such repair as aforesaid will not prejudice any right to a larger contribution sum from the other Owner as a result of any rule of law regarding liability for negligence or willful acts or omissions. The rights of contribution set forth herein will run with the land constituting the Lots subject to OCRM's joint-use dock requirements and will pass to the successors-in-title of the Owners of such Lots.

4.1.6 Declarant Constructed Joint-Use Docks; Exclusive Common Area. In the event Declarant and/or OCRM requires that a single, fixed-pier and one or more floating docks be shared by the Community Association and the Club, and such facility is constructed by Declarant, the shared facilities will constitute a Common Area owned and maintained by the Community Association for the exclusive use and benefit of the Community Association and the Club.

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4.2 Maintenance of Docks. All Owners who construct, or cause to be constructed, dock as herein provided, must maintain said structures in good repair and keep the same safe, clean and orderly in appearance at all times, and further agree to paint or otherwise treat with preservatives all wood or metal located above the high water mark, exclusive of pilings, and to maintain such paint or preservatives in an attractive manner. The Architectural Review Board will be the judge as to whether the docks are safe, clean, orderly in appearance, and properly painted or preserved in accordance with reasonable standards, and where the Architectural Review Board notifies the particular Owner in writing that said dock fails to meet acceptable standards, said Owner will thereupon remedy such conditions within thirty (30) days to the satisfaction of the Architectural Review Board, and that failing to so remedy such conditions, the Owners hereby covenant and agree that the Architectural Review Board may make the necessary repairs, but is not obligated to make such repairs or take such actions as will bring said dock up to acceptable standards, all such repairs and actions to be at the sole expense of the Lot Owner in question.

#### ARTICLE 5. PLAN OF DEVELOPMENT OF DRAINAGE AREAS AND LAGOON SYSTEMS

5.1 Wetlands' Certifications and Permits. The terms and conditions of this Article 5 are subject and subordinate to any and all declarations of restrictive covenants filed Of Record in connection with the issuance of any permit and certification issued by the U.S. Army Corps of Engineers and/or the Office of Ocean and Coastal Resource Management ("OCRM") of the South Carolina Department of Health and Environmental Control.

5.2 Lagoon System. The Association is responsible at the Association's sole cost and expense to repair and maintain that portion of the Lagoon System (including, all drainage piping) located on the Residential Property. The Club is responsible at the Club's sole cost and expense to repair and maintain that portion of the Lagoon System (including, all piping) located on the Club Property. Each party shall maintain such items in a good condition consistent with other first class residential golf course communities. In addition, Declarant will be responsible for the construction and maintenance of all drainage piping located underneath any roads and the structures associated with such drainage piping, all as shown on the Lagoon Plan. The Declarant and the Club have agreed to cooperate in the maintenance of the entire Lagoon System in order to allow same to operate as one cohesive system. The Club agrees to use its good faith efforts to keep the lagoons on both the Club Property and the Property charged.

5.3 Best Management Practices. All construction, development, operation and ownership of the Property (including the Additional Property) or portions thereof, shall be done in such a way as to attempt to follow four treatment recommendations to be utilized in the construction, development, operation and ownership of the Property (including the Additional Property) and its components. The four recommendations include minimization of directly connected impervious areas, filter strips and grass swales, multi-cell wet detention systems and storm water reuse. These treatment recommendations are summarized as follows:

5.3.1 Minimization of Directly Connected Impervious Area. Minimization of directly-connected impervious areas ("DCIA") involves directing stormwater runoff to lawns rather

BKE 358PG267

than direct discharge to secondary stormwater conveyance facilities. Directly connected impervious area is defined as the impermeable area that drains directly to the improved drainage system, such as paved gutters, improved ditches or pipes. The minimization of DCIA delays the concentration of flows into the improved drainage system and maximizes the opportunity for rainfall to infiltrate at or near the point at which it falls. The layout for the Dwellings constructed on the Lots should be designed to minimize DCIA.

5.3.2 Grassed Swales and Vegetated Filter Strips. Swales, grassed waterways and vegetated filter strips should be designed and constructed along streets within the Property and the Additional Property. The swales should be a shallow trench with side slopes flatter than three (3) feet horizontally to one (1) foot vertically. The swales should contain contiguous areas of standing or flowing water only following rainfall and shall be planted with or contain vegetation suitable for soil stabilization, stormwater treatment, and nutrient uptake. A vegetated filter strip is a strip of land across which stormwater from a street, parking lot, rooftop, or other pervious surface sheet-flows before entering adjacent stormwater conveyances or receiving waters. Notwithstanding the above, the construction of the roads within the Property have been approved by the County of Charleston, South Carolina to allow for curb and gutters.

5.3.3 Wet Detention Systems. Multiple wet detention pond systems which include extended wet detention facilities will comprise the primary stormwater management system within the Property. These systems should incorporate deeper areas for sedimentation, shallow littoral areas for the treatment of dissolved constituents, discharge structures which will capture the first inch of runoff and allow for a slow bleed down.

5.3.4 Stormwater Reuse. Stormwater reuse systems should be designed to prevent the discharge of a given volume of stormwater into surface waters by deliberate application of stormwater runoff for irrigation or industrial uses. Areas that may be irrigated include the Club Property and open areas within the Residential Property.

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ARTICLE 6. ARCHITECTURAL GUIDELINES; OWNERS' COVENANTS AND USE RESTRICTIONS

6.1 Purpose. In order to preserve the natural setting and beauty of the Community, to establish and preserve a harmonious and aesthetically pleasing design for the Community, and to protect and promote the value of the Community, the Lots and Dwellings, and all improvements located therein or thereon will be subject to the restrictions set forth in this Article 6. Every grantee of any interest in the Community, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article 6.

6.2 Architectural Review Board. The Declarant will establish an Architectural Review Board which will consist of not more than five (5) nor less than three (3) Members. The regular term of office for each member will be one year. Any member appointed by the Declarant may be removed with or without cause by the Declarant at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy will serve the remainder of the term of the former member. Notwithstanding the foregoing to the contrary, any member appointed to the Architectural Review Board by the Board of Directors upon assignment to the Community Association of the whole or any portion of Architectural Review Board functions pursuant to Section 6.2.1 below will be subject to the prior approval of Declarant until that date which is three (3) years from and after the date on which the Declarant Control Period expires. The Architectural Review Board will elect a chairman and he, or in his absence, the vice chairman, will be the presiding officer at its meetings. The Architectural Review Board will meet at least once in each calendar month, as well as upon call of the chairman, and all meetings will be held at such places as may be designated by the chairman. Three (3) members will constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Architectural Review Board will constitute the action of the Architectural Review Board on any matter before it. The Architectural Review Board is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Architectural Review Board in performing its functions set forth herein.

6.2.1 Right to Assign Architectural Review Board Functions to the Community Association. The Declarant reserves the right to assign to the Community Association, at its sole discretion, the whole or any portion of its rights reserved in this Declaration which are exercisable by the Architectural Review Board. The Community Association hereby agrees to accept the assignment of these rights without the necessity of any further action by it.

6.2.2 Liability of Architectural Review Board Members. No member of the Architectural Review Board will be liable to any Lot Owner for any decision, action or omission made or performed by such Architectural Review Board member in the course of his duties unless such member acted in bad faith or in reckless disregard of the rights of any person or of the terms of this Declaration or the Bylaws.

(a) Indemnification. Until the Architectural Review Board functions are assigned to the Community Association, the Declarant will, to the full extent permitted by law, indemnify all persons designated from time to time by the Declarant to serve as members of the

ME 358PG269

Architectural Review Board from and against any liability, including attorney fees, as may be incurred by such members contrary to the provisions of this Section 6.2.2. Following Declarant's assignment to the Community Association of the within Architectural Review Board functions, members of the Architectural Review Board will be indemnified by the Community Association pursuant to the provisions of the By-Laws.

6.3 Permitted Improvements. No improvements of any nature whatsoever will be constructed, altered, added to, or maintained upon any part of the Community, except (a) improvements which are constructed by Declarant, (b) such improvements as are approved by the Architectural Review Board in accordance with this Article 6, or (c) improvements which pursuant to this Article 6 do not require the consent of the Architectural Review Board.

6.4 Architectural Approval. To preserve the architectural and aesthetic appearance of the Community, no construction of improvements of any nature whatsoever will be commenced or maintained by the Community Association or any Owner, other than Declarant, with respect to the construction or exterior of any improvement, structure, Dwelling or with respect to any other portion of the Community, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servants' quarters, or other outbuildings, nor will any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the Architectural Review Board, a survey showing the location of trees of four (4) inches in diameter at a height of four (4') feet above the ground level and other significant vegetation on such property) showing the nature, color, type, shape, height, materials, and location of the same will have been submitted to and approved in writing as to the harmony of external design, location, and appearance in relation to surrounding structures and topography by the Architectural Review Board. One copy of such plans, specifications, and related data so submitted will be retained in the records of the Architectural Review Board, and the other copy will be returned to the Owner marked "approved" or "disapproved." The Architectural Review Board will establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, inspectors, or attorneys retained in accordance with the terms hereof. The fee initially established for such review will be \$1,000.00 for each submission, and the Architectural Review Board will have the right to increase this amount from time to time. For purposes of such review, if the Architectural Review Board determines, in its sole discretion, that an Owner has failed to follow the standards of the Board, it may give notice to the Owner that if the Board is required to take up any additional time following its review to take place after such notice, then such later additional time will be deemed a new submission requiring payment of another review fee as a condition to its taking such additional time. The Architectural Review Board will not be limited in the number of such notices it may give or the number of such additional review fees it may collect as a result of Owner's continued failure to follow the standards. Notwithstanding the foregoing requirement of architectural review, an Owner of any enclosed Dwelling or other building or structure may make interior improvements and alterations therein without the necessity of approval or review by the Architectural Review Board; provided, however, such approval will be required if such interior improvements are made within any garage, underneath parking area or

BKE 358PG270

similar area plainly within view of adjacent properties. The Architectural Review Board will have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Community Association. In connection with approval rights and to prevent excessive drainage or surface water runoff, the Architectural Review Board will have the right to establish a maximum percentage of a property which may be covered by Dwellings, buildings, structures, or other improvements, which standards will be promulgated on the basis of topography, percolation rates of the soil, soil types and conditions, vegetation cover, and other environmental factors. Following approval of any plans and specifications by the Architectural Review Board, representatives of the Architectural Review Board will have the right during reasonable hours to enter upon and inspect any property or improvements with respect to which construction is underway within the Community to determine whether or not the plans and specifications thereof have been approved and are being complied with. In the event the Architectural Review Board will determine that such plans and specifications have not been approved or are not being complied with, the Architectural Review Board will be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In the event the Architectural Review Board fails to approve or disapprove in writing any proposed plans and specifications within forty-five (45) days after such plans and specifications will have been submitted, such plans and specifications will be deemed to have been expressly approved. Upon approval of plans and specifications, no further approval under this Article 6 will be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Refusal of approval of plans and specifications may be based by the Architectural Review Board upon any ground which is consistent with the objects and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

6.5 Landscaping Approval. To preserve the aesthetic appearance of the Community, no landscaping, grading, excavation, or filling of any nature whatsoever will be implemented and installed by the Community Association or any Owner, other than Declarant, unless and until the plans therefor have been submitted to and approved in writing by the Architectural Review Board. The provisions of Section 6.4 regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. will also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. Such plans will include a calculation of the ratio of the area to be covered by grass lawns versus the area to be left in a natural state, and the Architectural Review Board will be entitled to promulgate standards with respect to such ratios. Furthermore, without the consent of the Architectural Review Board, no hedge or shrubbery planting which obstructs sight-lines at elevations between two (2) and six (6) feet above streets and roadways within the Community will be placed or permitted to remain on any property within the triangular area formed by the street property lines and a line connecting such lines at points fifteen (15) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the extended street property lines. The same sight-line limitations will apply to any property subject to this Declaration within ten (10) feet from the intersection of a street property line with the edge of a driveway. No trees will be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight-lines or unless otherwise consented to by the Architectural Review Board. Unless located within ten (10) feet of a building

BKE 358PG271

or a recreational or parking facility, no Owner, other than Declarant, will be entitled to cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of four (4) inches or more at a point of four (4') feet above the ground level, or other significant vegetation as designated, from time to time, by the Architectural Review Board, without obtaining the prior approval of the Architectural Review Board, provided that dead or diseased trees which are inspected and certified as dead or diseased by the Architectural Review Board or its representatives, as well as other dead or diseased shrubs, bushes, or other vegetation, will be cut and removed promptly from any property by the Owner thereof. All of the landscaping within a Lot must be completed within ninety (90) days of occupancy or substantial completion of the Dwelling, whichever date will first occur.

6.5.1 Applicable Tree Ordinances. Anything contained herein to the contrary notwithstanding, the limitations herein provided are in addition to, and not substitutions for, the ordinances, rules, regulations, and conditions of any political subdivision of the State of South Carolina with jurisdiction of the cutting and removal of trees. In the event of any conflict between the limitations and standards herein provided and those provided in any such ordinance or statute, the more restrictive of the two will take precedence over the other.

6.6 Approval Not a Guarantee. No approval of plans and specifications and no publication of architectural guidelines will be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards will in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Community Association, nor the Architectural Review Board will be responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article 6, nor any defects in construction undertaken pursuant to such plans and specifications.

#### 6.7 Construction of Improvements.

6.7.1 Siting of Improvements; Setbacks. Since the establishment of standard, inflexible building setback lines for the location of structures tend to force construction of such buildings both directly behind and directly to the side of each other with detrimental effects on privacy, views, preservation of important trees, etc., no specific setback lines are established by this Declaration. Anything contained herein to the contrary notwithstanding, in the event any of the foregoing setbacks lies within an easement area shown and noted on the Site Plan, construction setback will be measured by reference to the greater of the foregoing distances or to the most interior line of such Site Plan easement encumbering the Lot. Furthermore, in order to assure that location of structures will be staggered where practical and appropriate so that the maximum amount of view and breeze will be available thereto, that the structures will be located with regard to ecological constraints and topography, taking into consideration the elevations, the location of large trees and similar considerations, the Declarant, through the Architectural Review Board, reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any building or other structure upon all properties within the Community. Provided, however, that such location will be determined only after reasonable opportunity is afforded the



BKE 358PG272

Owner to recommend a specific site and provided further, that in the event an agreed location is stipulated in writing by Declarant, the Architectural Review Board will approve automatically such location. Anything contained herein to the contrary notwithstanding, in the event Declarant creates any setback lines elsewhere in this Declaration, in the Site Plan or other writing signed by Declarant, then, in that event, all buildings, structures, or other improvements on or with respect to any Lot and/or Dwelling covered thereby will be located only within the setback lines so specified, provided that the Architectural Review Board will be empowered to grant variances with respect to such setback lines if so permitted in any such provision of this Declaration, the Site Plan, Supplemental Declaration, or other writing of Declarant; and provided further, however, the Site Plan, Supplemental Declaration, other writing of the Declarant, or the Architectural Review Board may establish more, but not less, restrictive setbacks than may be established in any applicable PUD or other zoning applicable thereto.

6.7.2 Time of Construction Activities. No construction of improvements on any Lots or Dwellings will be undertaken or conducted on any Saturdays, Sundays, or holidays as established by the Architectural Review Board, except for (a) construction activities of Declarant, (b) emergency situations involving the potential loss, injury, or damage to persons or property, and (c) as otherwise permitted by the Architectural Review Board.

6.7.3 Owner Deposit; Construction Completion. The Architectural Review Board, in its sole discretion, may require that an Owner deposit with the Architectural Review Board a sum of no more than \$5,000.00 bond payment of any unrepaired damage done to Common Areas, including roadways, as a result of construction work by the Owner. The Architectural Review Board will be entitled to retain said deposit and apply it to any such required repair, provided, the Owner will remain fully liable for all costs and expenses of such required repair in excess of said deposit as further set forth herein. The exterior of any improvement permitted by this Declaration will be completed within one year after commencement of construction, except where the Architectural Review Board allows for an extension of time because such completion within such time is impossible or would result in great hardship to the Owner or builder thereof due to strikes, national emergencies, fires, floods, lightning, earthquakes, or other casualties.

6.7.4 Temporary Structures. No structure of a temporary character will be placed upon any property subject to this Declaration at any time, provided, however, that this prohibition will not apply to Declarant's sales and construction activities pursuant to Section 6.21, or to shelters or temporary structures used by the contractor during construction of permanent structures, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the subject property after completion of construction. The design and color of structures temporarily placed by contractor will be subject to reasonable aesthetic control by the Architectural Review Board. The provisions of this Section 6.7.4 will not prohibit the erection of temporary structures for social functions as may be permitted by rules and regulations promulgated by the Architectural Review Board.

6.7.5 Construction Debris. During the continuance of construction by an Owner, such Owner will require its contractors to maintain the property upon which such work is being done in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and

BKE 358PG273

debris will be kept within refuse containers. Upon completion of construction, such Owner will cause its contractors to immediately remove all equipment, tools, and construction material and debris from the property on which such construction has been completed.

6.7.6 Occupancy. Dwellings may not be temporarily or permanently occupied until proper and suitable provision has been made for the disposal of sewage by connection with approved septic systems or sewer mains, the construction of the Lot has been completed, and a certificate of occupancy has been issued by both the Architectural Review Board and by the political subdivision with jurisdiction thereof.

6.8 Building Restrictions. Except as may be otherwise set forth in this Declaration, in the Site Plan, in any Supplemental Declaration, in any agreement with Declarant, or by specific deed restriction, the following building restrictions will apply with respect to the properties subject to this Declaration:

6.8.1 Number of Buildings on Lots. On a Lot, the Declarant and/or the Architectural Review Board shall determine the number of structures that may be constructed other than one (1) detached single-family Dwelling and one (1) accessory building, which may include a detached private garage, servant's quarters or pool house, provided the use of such dwelling or accessory building does not overcrowd the site and provided further, that such building is not used for any activity normally conducted as a business. Such accessory buildings may not be constructed prior to the construction of the main building. A guest house or like facility may be constructed with such approvals, but said suite may not be rented or leased except as part of the entire premises including the main dwelling.

6.8.2 Square Footage Requirements. All Dwellings constructed on Lots will have a minimum of three thousand (3,000) square feet of Living Space (excluding any guest house). Declarant reserves the right to modify, amend or change the within square footage requirement as it may apply to any Lot or Dwelling within the Additional Property and upon the filing of a Supplemental Declaration Of Record; provided, however, upon the failure of Declarant to make specific provision for a minimum square footage of Living Space in any such Supplemental Declaration, the foregoing restriction will apply to any Dwelling constructed upon a Lot within such Additional Property. There will be no minimum square footage requirements with respect to a Dwelling or other structure constructed within any portion of the Property as a multi-family, condominium complex except as may be specifically provided in a Supplemental Declaration filed Of Record with respect thereto.

6.8.3 Other Requirement of Residences. In addition, all residential structures constructed on a Lot will be designed and constructed in compliance with the requirements of the Building Code of Charleston County, and/or such other political subdivision with jurisdiction thereof, related to construction in flood hazard areas.

6.9 Service Yards. Each Owner of a Lot will provide visually-screened areas to serve as service yards in which garbage receptacles, fuel tanks, gas and electric meters, supplies, and equipment which are stored outside must be placed or stored in order to conceal them from view

BKE 358PG274

from roads and adjacent properties. Any such visual barrier will be a least six (6) feet high and shall consist of fencing, landscaping and planting which is approved by the Architectural Review Board in accordance with the architectural guidelines adopted therefor.

6.10 Use of Lots and Dwellings. Except as permitted by Section 6.21, each Lot and Dwelling will be used for residential purposes only, and no trade or business of any kind may be carried on therein. The use of a portion of a Dwelling as an office by an Owner or his Tenant will not be considered to be a violation of this covenant if such use does not create customer, client, or employee traffic; provided that in no event will any Lot or Dwelling be used as the office of or storage area for any building contractor, real estate developer or real estate broker, except as may be on a temporary basis, with the express written consent of the Architectural Review Board, and in accordance with reasonable rules and regulations promulgated by the Architectural Review Board. Furthermore, the operation of the Recreational Amenities, including, without limitation, the charging and collecting of rentals, fees and charges in accordance with this Declaration will be expressly permitted within the Community and will not be deemed to be a violation of the terms of this Section 6.10. Leasing or rental of a Dwelling for residential purposes will also not be considered to be a violation of this covenant so long as the lease (a) is for not less than the entire Dwelling and all the improvements thereon, (b) is for a term of no less than one (1) year and (c) is otherwise in compliance with rules and regulations as may be promulgated and published from time to time by the Declarant and the Architectural Review Board. All leases or rental agreements will be required to be in writing, and upon request, the Owner will provide the Declarant and Architectural Review Board with copies of such lease or rental agreement. Any renter, lessee or Tenant will in all respects be subject to the terms and conditions of this Declaration and the rules and regulations adopted hereunder.

6.11 Exterior Appearance. No chain-link fences will be permitted within the Community, except with regard to maintenance areas within the Common Areas. Further, no foil or other reflective materials will be used on any windows for sunscreens, blinds, shades, or other purpose, except as specifically permitted by the Architectural Review Board, nor will any window-mounted heating or air-conditioning units be permitted. Except within screened service yards, outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and will not be erected, placed, or maintained, nor will any clothing, rugs, or other item be hung on any railing, fence, hedge, or wall.

6.12 Signs. Except as may be required by legal proceedings, no signs or advertising posters of any kind, including "For Rent," "For Sale," and other similar signs erected by Owners, the Community Association, or any agent, broker, contractor or subcontractor thereof, will be maintained or permitted within any windows or on the exterior of any improvements or on any unimproved portion of property located within the Community, without the express written permission of the Architectural Review Board. The approval of any signs and posters, including, without limitation, name and address signs, will be upon such conditions as may be from time to time determined by the Architectural Review Board and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Section 6.12 will not apply to Declarant. In

BKE 358PG275

addition, the Board of Directors, on behalf of the Community Association, will have the right to erect reasonable and appropriate signs on any portion of the Common Areas and within those easement areas established in Section 7.9 hereof and in accordance with architectural guidelines adopted therefor by the Architectural Review Board.

6.13 Lights. The design and location of all exterior lighting fixtures will be subject to the approval of the Architectural Review Board. Neither these nor any other illumination devices, including, but not limited to, Christmas ornaments, located anywhere on the structures or grounds of any of the Property will be located, directed, or of such intensity to affect adversely, in the sole discretion of the Architectural Review Board, the nighttime environment of any adjoining property.

6.14 Antennas. No television antenna, radio receiver, or other similar device will be attached to or installed on any portion of the Community, except as required by the Telecommunications Act of 1996 and implementing rules therefor issued by the Federal Communications Commission; provided, however, that Declarant and the Community Association, and their successors and assigns, will not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio, or other similar systems within the Community. Notwithstanding the foregoing to the contrary, the Architectural Review Board shall have sole discretion in the approval of the location and screening of any such device.

6.15 Security Systems. In the event that either Declarant or the Community Association will install a central security system within the Community, or in the event Declarant grants to a third-party supplier the right to install same, with the capability of providing security services to each Dwelling, then no Owner will be entitled to install or maintain any alternative security systems within a Dwelling, other than security systems which are appurtenant to and connected with such central security system, without obtaining the prior written consent and approval of the Declarant, during the Declarant Control Period, and thereafter the Board of Directors.

6.16 Water Wells and Septic Tanks. Subject to the terms of Section 7.14, all private water wells and sewage systems must be approved in writing by the Architectural Review Board.

6.17 Pets. No animals, livestock, birds, or poultry of any kind will be raised, bred, or kept by any Owner upon any portion of the Community, provided that a reasonable number of generally recognized house pets may be kept in Dwellings, subject to rules and regulations adopted by the Community Association, through its Board of Directors, and further provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose. No pet will be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing, or confinement of any pet will be constructed or maintained on any part of the Common Areas. Pets will be under a leash at all times when walked or exercised in any portion of the Common Areas. Upon the written request of any Owner, the Board of Directors may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 6.17, a particular pet is a generally recognized house pet or such pet is a nuisance, and the Board will have the right to require the owner of a particular pet to remove such pet from the Community if such pet is found to be a nuisance or to be in violation of these restrictions. The Board of Directors will have the further right, subject to Section 14.2, to fine any Owner (in an amount from time to

BME 358PG276

time established and published by the Board of Directors) for the violation of these pet restrictions by such Owner or an Occupant of his Dwelling, and an Owner will be liable to the Community Association for the cost of repair of any damage to the Common Areas caused by the pet of such Owner or of an Occupant of such Owner's Dwelling. Any such fine or cost of repair will be added to and become a part of that portion of any Assessment next coming due to which such Dwelling and its Owner are subject.

6.18 Nuisances. No rubbish or debris of any kind will be dumped, placed, or permitted to accumulate upon any portion of the Community, nor will any nuisance or odors be permitted to exist or operate upon or arise from the Community, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Community. Noxious or offensive activities will not be carried on in any part of the Community, and the Community Association and each Owner, his family, Tenants, guests, invitees, servants, and agents will refrain from any act or use which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the Occupants of other portions of the Community or which could result in a cancellation of any insurance for any portion of the Community, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security and fire alarm devices used exclusively for such purposes, will be located, used, or placed within the Community, except as may be permitted pursuant to terms, conditions, rules and regulations adopted therefor by the Architectural Review Board. Any Owner, or his family, Tenant, guest, invitee, servant, or agent who dumps or places any trash or debris upon any portion of the Community will be liable to the Community Association for the actual costs of removal thereof or the sum of \$125.00, whichever is greater, and such sum will be added to and become a part of that portion of any Assessment next becoming due to which such Owner and his property is subject.

6.19 Motor Vehicles, Trailers, Boats, Etc. Each Owner will provide for parking of automobiles off the streets and roads within the Community. There will be no outside storage or parking upon any portion of the Community of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other related forms of transportation devices, except if adequately screened from view or otherwise permitted in writing by the Declarant. Any permitted parking of a mobile or motor home within an adequately screened area will not be construed as to permit any person to occupy such mobile or motor home, which is strictly prohibited. Furthermore, although not expressly prohibited hereby, the Architectural Review Board may at any time prohibit or write specific restrictions for mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts, all terrain vehicles (ATVs), and other vehicles, or any of them, from entering and/or being kept, placed, stored, maintained, or operated upon any portion of the Community if in the opinion of the Architectural Review Board such prohibition or restriction will be in the best interests of the Community. It is the intention of Declarant that the Architectural Review Board will restrict the type and number of vehicles allowed within the Community. Such policies may change from time to time with changing technology. The purpose of vehicle restrictions is to minimize the impact of vehicles on the natural environment and roads. No Owners

BKE 358PG277

or other Occupants of any portion of the Community will repair or restore any vehicle of any kind upon or within a property subject to this Declaration except (a) within enclosed garages or workshops, or (b) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

6.20 Owner's Landscape Maintenance Between Lot Line and Adjacent Paving. Each Owner will be responsible for maintaining on a regular basis the landscaping, if any, and ground cover along the roadside bordering the Owner's Lot or Dwelling, whether or not such area is a part of the Owner's Lot. Such maintenance will be performed by each Owner within the unpaved area of right-of-way immediately adjacent to a Lot's lot line, and will be of such quality of maintenance as is required to maintain a Community consistency in appearance and cleanliness. An Owner's responsibility under this Section 6.20 to provide regular maintenance will be fulfilled regardless of whether or not an Owner has constructed improvements upon such property or whether or not the Owner permanently resides outside of the Community.

6.21 Sales and Construction Activities of Declarant. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it will be expressly permissible for Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of the whole or any portion of the Property and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and models, provided that the location of any construction trailers of any assignees of Declarant's rights under this Section 6.21 will be subject to Declarant's approval. The right of Declarant to maintain and carry on such facilities and activities will include specifically the right of Declarant to use Dwellings as model residences, and to use any Dwelling as an office for the sale of Lots and/or Dwellings and for related activities.

6.22 Multiple Ownership. No Lot or Dwelling may be owned by more than four (4) Owners at any one time. For the purposes of this restriction, a married couple constitutes a single Owner. Furthermore, the Property subject to this Declaration, including any improvements thereon or to be built thereon, will not, without prior written consent as hereinafter provided, be used for or subject to any type of Vacation Time Sharing Plan or Vacation Multiple Ownership Plan as defined by the 1976 Code of Laws for the State of South Carolina, as amended, Section 27-32-10, et. seq., or any subsequent laws of this State dealing with that or similar type of ownership, or which is used for, in and/or as an advertised part of any time share exchange program which makes available as accommodations the said property and improvements thereon, which is not otherwise registered as a Vacation Time Sharing Plan or Vacation Multiple Ownership Plan. Such prior written consent must be sought from the Declarant, during the Declarant Control Period, and thereafter from the Board of Directors. In the event consent is granted for any ownership under a Vacation Time Sharing Plan, Vacation Multiple Ownership Plan, or similar type ownership, the Declarant or the Board of Directors, as the case may be, will have the right to amend this Declaration in any respect to take into account the nature of such ownership, including, but not limited to, provision for access and use of any Recreational Amenities under Section 7.3, provision for Member voting under Section 8.2, and provision for Assessments under Article 13. Notwithstanding the foregoing to the contrary, a Lot or Dwelling may be owned by a corporation or partnership so long as such

BKE 358PG278

corporation or partnership does not have more than four (4) shareholders or partners; provided, however, that the foregoing prohibition will not apply to Declarant, its affiliates, or their respective successors or assigns, or with respect to any Institutional Mortgagee or such corporation or partnership approved by Declarant for such ownership and upon terms and conditions of such approval.

6.23 Bridges. The Declarant expressly reserves to itself, its agents or assigns, any other provisions in this Declaration notwithstanding, the right to build bridges, walkways or fixed spans across any or all natural or man-made canals, creeks or lagoons in the Community. Nothing in this Section will be construed as placing an affirmative obligation on the Declarant to provide or construct any bridge, walkway or fixed span unless such bridge, walkway or fixed span will be shown and specifically designated on the Site Plan Of Record and incorporated in the deed of conveyance to the grantee Owner asserting such affirmative obligation by the Declarant.

6.24 Owner's Resubdivision. No Common Area or Lot or Dwelling will be subdivided, or its boundary lines changed, nor will application for same be made to any political subdivision with jurisdiction thereof, except with the prior written approval of the Declarant during the Declarant Control Period, and thereafter except with the prior written approval of the Board of Directors. However, the Declarant reserves the right to so subdivide pursuant to Sections 2.1 and 7.6, and to take such other steps as are reasonably necessary to make such replatted property suitable and fit as a building site, including, but not limited to, the relocation of easements, walkways, rights-of-way, private roads, bridges, parks, and Common Areas.

6.24.1 Consolidation of Lots. The provisions of Section 6.24 will not prohibit the combining of two (2) or more contiguous Lots into one (1) larger Lot. Following the combining of two (2) or more Lots into one (1) larger Lot, only the exterior boundary lines of the resulting larger Lot will be considered in the interpretation of this Declaration. Consolidation of Lots, as described herein, must be approved by the Declarant during the Declarant Control period, and thereafter by the Board of Directors, said approval to be granted in its sole discretion upon such terms and conditions as may be established by it from time to time, including specific provisions for the payment of Assessments.

6.25 Use of Trademark. Each Owner and Occupant, by acceptance of a deed to any lands, tenements or hereditament within the Community hereby acknowledges that The Golf Club at Briar's Creek is a service mark and trade mark. Each Owner and Occupant agrees to refrain from misappropriating or infringing this service mark or trademark.

6.26 Owner Recording Additional Restrictions on Property. No Owner may impose additional restrictive covenants on any lands within the Property beyond those contained in this Declaration without consent of the Declarant during the Declarant Control Period, and thereafter without consent of the Board of Directors. The Declarant may impose additional restrictive covenants on property then owned by the Declarant without the consent of any other Owner or the Community Association.

6.27 Intentionally Omitted.

BKE 358PG279

6.28 Repurchase Option. During the Declarant Control Period, the Declarant and its successors and assigns will have the right and option to purchase any Common Area, Lot, or Dwelling within the Community which is offered for sale by the Owner thereof, such option to be at the price and on the terms and conditions of any bona fide offer therefor which is acceptable to such Owner and which is made in writing to such Owner. The Owner will promptly submit a copy of the same to Declarant, and Declarant will have a period of ten (10) business days (exclusive of Saturday, Sunday and Federal holidays) from and after the presentation of such offer to Declarant in which to exercise its purchase option by giving such Owner written notice of such exercise in accordance with Section 16.15. If Declarant fails to respond or to exercise such purchase option within said ten (10) -day period, Declarant will be deemed to have waived such purchase option. If Declarant responds by declining to exercise such option, Declarant will execute an instrument evidencing its waiver of its repurchase option, which instrument will be in recordable form. In the event that Declarant does not exercise its purchase option and such sale to a third party is not consummated on such terms and conditions set forth in the bona fide offer within six (6) months of the date in which the offer is transmitted to Declarant, or within the period of time set forth in such bona fide offer, whichever is later, the terms and limitations of this Section 6.28 will again be imposed upon any sale by such Owner. If Declarant elects to purchase, the transaction will be consummated within the period of time set for closing in said bona fide offer, or within sixty (60) days following delivery of written notice by Declarant to such Owner of Declarant's decision to so purchase such Lot or Dwelling, whichever is earlier.

6.29 Trespass. Whenever the Declarant is permitted by this Declaration to correct, repair, clean, preserve, clear out or do any action on the property of any Owner, or on the easement areas adjacent thereto entering the property and taking such action will not be deemed a trespass.

6.30 Assignment of Declarant's Rights to the Community Association. The Declarant reserves the right to assign to the Community Association, at its sole discretion, its rights reserved in this Declaration, including all rights set forth in this Article 6. The Community Association hereby agrees to accept any and all assignments of rights hereunder, and no further action will be required by it.

6.31 Other Rights and Reservations. **THE OMISSION OF ANY RIGHT OR RESERVATION IN THIS ARTICLE WILL NOT LIMIT ANY OTHER RIGHT OR RESERVATION BY THE DECLARANT WHICH IS EXPRESSLY STATED IN OR IMPLIED FROM ANY OTHER PROVISIONS IN THIS DECLARATION.**

#### ARTICLE 7. PROPERTY RIGHTS

7.1 General Rights of Owners. Each Lot and/or Dwelling will for all purposes constitute real property which will be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each Owner will be entitled to the exclusive ownership and possession of his said property, subject to the provisions of this Declaration, including without limitation, the provisions of this Article 7. If any chutes, flues, ducts, conduits, wires, pipes, plumbing, or any other apparatus or facilities for



BKE 358PG280

the furnishing of utilities or other services or for the provision of support to such a property lie partially within and partially outside of the designated boundaries thereof, any portions thereof which serve only such property will be deemed to be a part of such property, and any portions thereof which serve more than one such property or any portion the Common Areas will be deemed to be a part of the Common Areas. The ownership of each property subject to this Declaration will include, and there will pass with each property as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the Common Areas as established hereunder, and the limitations applicable, which will include, but not be limited to, membership in the Community Association. Each Owner will automatically become a Member of the Community Association and will remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Community Association will automatically pass to his successor-in-title to his or its property, and upon such transfer, such former Owner will simultaneously transfer and endorse to his successor-in-title any certificates or other evidences of his membership in the Community Association.

7.2 Owner's Easement of Enjoyment. Subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board of Directors in accordance with the By-Laws and the terms hereof, every Owner, his family, Tenants, and guests will have a nonexclusive right, privilege, and easement of use and enjoyment in and to the Common Areas, to the extent so entitled hereunder, such easement to be appurtenant to and to pass and run with title, subject to the rights, restrictions, reservations, covenants, easements and obligations reserved, granted or alienable in accordance with this Declaration, including, but not limited to:

7.2.1 Right Of Community Association To Borrow Money. The right of the Community Association to borrow money (a) for the purpose of improving the Community, or any portion thereof, (b) for acquiring additional Common Areas, (c) for constructing, repairing, maintaining or improving any facilities located or to be located within the Community, or (d) for providing the services authorized herein, and, subject to the provisions of Section 12.2, to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Community Association will be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

7.2.2 Declarant's Reserved Rights and Easements. The rights and easements specifically reserved to Declarant in this Declaration.

7.2.3 Community Association's Rights to Grant and Accept Easements. The right of the Community Association to grant and accept easements as provided in Section 7.8 and to dedicate or transfer fee simple title to all or any portion of the Common Areas to any public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the simple title must be approved by a majority of those present in person or by proxy at a duly held meeting of the Community Association and by Declarant, during the Declarant Control period and thereafter for so long as Declarant owns any of the Property primarily for the purpose of

BKE 358PG281

development or sale or has the unexpired option to add the Additional Property or any portion thereof to the Community.

7.2.4 Community Association's Rights and Easements. The rights and easements specifically reserved in this Declaration for the benefit of the Community Association, its directors, officers, agents, and employees.

7.2.5 Declarant's Easements for Additional Property. The rights and easements reserved in Section 7.11 hereof for the benefit of the Additional Property.

### 7.3 Recreational Amenities.

7.3.1 Access and Use of Recreational Amenities. Subject to the terms and provisions of this Declaration and the rules, regulations, and Recreational Assessment from time to time established by the Board of Directors, every Owner of a Dwelling and his family, Tenants, and guests will have the nonexclusive right, privilege, and easement of access to and the use and enjoyment of the Recreational Amenities. Notwithstanding the foregoing to the contrary, those Owners of Dwellings, their spouses, and their Dependent Children, paying a Recreational Charge for exclusive use of a Community Association's use-for-fee facility or service will have the exclusive use thereof, subject to the payment of Recreational Assessment therefor which are from time to time established by the Board of Directors. Such Owners' guests, Tenants, and non-Dependent Children, as well as co-Owners who have not been designated pursuant to (b) below, will have access to and use of the Recreational Amenities subject to rules, regulations, and Recreational Assessment from time to time established by the Board of Directors; provided there will be no distinction between such co-Owners, guests, Tenants, and non-Dependent Children with respect to the amount of Recreational Assessment each must pay. Notwithstanding the foregoing to the contrary, the Board of Directors will be entitled, but not obligated, to promulgate rules and regulations from time to time whereby grandchildren of Owners of Dwellings and non-Dependent Children of Owners of Dwellings have access to and the use of the Recreational Amenities on the same basis as Dependent Children of Owners of Dwellings. An Owner of a Dwelling may assign to the Tenant of his Dwelling such Owner's rights of access to and use of the Recreational Amenities so that such Tenant, his family and guests will be entitled to the access to and use and enjoyment of the Recreational Amenities on the same basis as an Owner of a Dwelling and his family and guests, provided that any such designation may not be changed within six (6) months after such designation is so made. Any Owner of a Dwelling so assigning such rights to his Tenant will give written notice thereof to the Board of Directors in accordance with Section 16.15, and after such assignment and notice, such Owner and his family and guests will thenceforth have access to and use of the Recreational Amenities on the same basis and for the same Recreational Assessment as guests of an Owner of a Dwelling, until such assignment is terminated and the Board of Directors is given written notice of such termination by such Owner. Nothing herein will be construed as requiring the Board of Directors to establish Recreational Assessment for the use of Recreational Amenities, use of which may be, in the sole discretion of the Board of Directors, covered solely by the Annual Assessment under Section 13.3.

BKE 358PG282

**7.3.2 Access and Use By Multiple Owners.** The Board of Directors may, in its sole discretion, establish a rule that in the event of any multiple ownership of a Dwelling which is permitted by Section 6.22 hereof, only the Owner of such Dwelling designated in writing to the Board of Directors by all co-Owners, as well as his spouse and Dependent Children, will be entitled to the use of the Recreational Amenities without user fees as provided above. The remaining co-Owners of such Dwelling and their families and guests will be entitled to access to and use of the Recreational Amenities in accordance with the rules, regulations, fees, and charges relating to Owner's guests, Tenants, and non-Dependent Children which are from time to time established by the Board of Directors. If no such designation is made by such co-Owners, then all such co-Owners will have access to and use of the Recreational Amenities on the same basis and for the same fees and charges as Owner's guests, Tenants, and non-Dependent Children. Any designation made pursuant to this Section 7.3.2 will not be permitted to be changed within six (6) months after such designation is so made. For purposes of this Section 7.3.2, multiple ownership will include ownership of a Dwelling by a partnership, corporation, limited liability company, or other entity so that any such entity will designate to the Board one natural person who is a partner or stockholder and who, with his spouse and Dependent Children will be entitled to access to and use of the Recreational Amenities on the same basis as Owners. In the absence of the establishment of any such rule of access and use by multiple Owners by the Board of Directors, all co-Owners will have equal access to Recreational Amenities.

**7.3.3 Declarant's Access and Use.** In addition to the rights of Owners with respect to the access to and use and enjoyment of the Recreational Amenities and the rights therein of owners of residential dwellings within the Additional Property as provided in Section 7.11, Declarant reserves the right to, from time to time, designate individuals who will have access to and use of the Recreational Amenities on a basis which is equal and equivalent to that which is enjoyed by Owners. Declarant will designate such individuals by written notice to the Board of Directors in accordance with Section 16.15, and Declarant reserves the right to, from time to time, add and remove individuals to and from such designated list, provided that for so long as Declarant owns any of the Property primarily for development of for sale or has the unexpired option to add the Additional Property or any portion hereof to the Community, there will be no more than a total of ten (10) individuals so designated by Declarant at any one time, and after such time as Declarant no longer owns a Lot primarily for the purpose of sale and no longer has the unexpired option to add the Additional Property or any portion thereof to the Community, the Declarant will designate no more than five (5) individuals at any one time. In addition, all such designated individuals will be officers, directors, or employees of Declarant or any of its affiliates, or real estate brokers and sales agents who are selling and/or listing Lots within the Community. Spouses and Dependent Children of such designated individuals will have access to and use of the Recreational Amenities on an equal and equivalent basis as Owners' spouses and Dependent Children, and such designated individuals' guests and non-Dependent Children will have access to and use of the Recreational Amenities in accordance with such rules, regulations, fees, and charges as are from time to time established by the Board with respect to Owners' guests, Tenants, and non-Dependent Children.

**7.3.4 Guests and Children Accompanied By Owner.** All guests and Dependent Children, under age 25, of Owners and of individuals designated by Declarant pursuant to this Section 7.3, as well as Tenants of Owners who are not assigned their respective Owners' rights

BKE 358PG283

pursuant to the provisions herein above provided, will at all times when using the Recreational Amenities be accompanied by an Owner or his spouse or by individuals designated by Declarant in accordance herewith or their spouses, provided that a waiver of such requirement may be made at any time in accordance with rules and regulations promulgated by the Board of Directors.

7.4 Access, Ingress and Egress: Roadways. All Owners, by accepting title to property conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such property and acknowledge and agree that such access, ingress, and egress will be limited to roads, sidewalks, walkways, and trails located within the Community from time to time, provided that pedestrian and vehicular access to and from all such property will be provided at all times. Subject to the right of the Declarant to dedicate any roadways within the Community pursuant to Section 7.4.2, there is reserved unto Declarant, the Community Association, and their respective successors and assigns the right and privilege, but not the obligation, (a) to maintain guarded or electronically-monitored gates controlling vehicular access to and from the Community, and, to require payment of toll charges for use of private roads within the Community by permitted commercial traffic or by members of the general public, provided that in no event will any such tolls be applicable to any Owners or their families, Tenants, or guests or to those individuals designated by Declarant pursuant to Section 7.3 above and their families or guests, or to any person who gives reasonable evidence satisfactory to entry guards that entry is with the specific permission of the Owner, or his duly authorized agent. Neither the Declarant nor the Community Association will be responsible, in the exercise of its reasonable judgment, for the granting or denial of access to the Property in accordance with the foregoing.

7.4.2 Uniform Act Regulating Traffic. In order to provide for safe and effective regulation of traffic, the Declarant reserves the right to file Of Record the appropriate consent documents making the Uniform Act Regulating Traffic on Highways of South Carolina (Chapter V, Title 56 of the Code of Laws of South Carolina, 1976) applicable to all of the private streets and roadways within the Community. Moreover, the Declarant may promulgate from time to time additional parking and traffic regulations which will supplement the above-mentioned State regulations as it relates to conduct on, over and about the private streets and roadways in the Community. These supplemental regulations will initially include but will not be limited to those set out hereinafter and the Declarant reserves the right to adopt additional regulations or to modify previously promulgated regulations from time to time and to make such adoption or modification effective thirty (30) days after mailing notice of same in accordance with Section 16.15 to the record Owners within the Community as of January 1 of the year in which such regulations are promulgated.

(a) No motorcycles or motorbikes may be operated on the private roads and streets within the Community. Mopeds (or other motor-powered bicycles) with no more than one horse power and electric or gas powered golf carts may be operated so long as they abide by all other traffic regulations and so long as they are not required to be registered by the State of South Carolina. Except as otherwise provided in this Declaration or pursuant to rules and regulations established therefor by the Architectural Review Board, no such motorcycles, motorbikes, mopeds, golf carts, or similar vehicles will be operated on any boardwalk, paths, recreational easements, or other similar Common Area.

BKE 358PG284

(b) The Declarant, or the Community Association after title to any private streets and roadways has passed to it from the Declarant, may post "no parking" signs along such private streets and roadways within the Community where it, in its sole discretion, determines it to be appropriate to do so. Violators of said "no parking" signs are subject to having their vehicles towed away and will be required to pay the cost of such towing and storage before their vehicle may be recovered. The act of towing said vehicles will not be deemed a trespass or a violation of the Owners' property rights, because the Owner will be deemed to have consented to such action by accepting the right to use the private roads and streets within the Community.

7.5 Easements for Declarant. During the period that Declarant owns any of the Property for sale or has the unexpired option to add the Additional Property or any portion thereof to the Community, Declarant will have an alienable and transferable right and easement on, over, through, under, and across the Common Areas for the purpose of constructing improvements in and to the Lots and the Additional Property and for installing, maintaining, repairing and replacing other improvements to the Property (including the Recreational Amenities and other portions of the Common Areas) contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article 2, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event will Declarant have the obligation to do any of the foregoing.

7.6 Changes in Boundaries; Additions to Common Areas. Declarant expressly reserves for itself and its successors and assigns, the right to change and realign the boundaries of the Common Areas and any Lots and/or Dwellings between such adjacent properties owned by Declarant, provided that any such change or realignment of boundaries will not materially decrease the acreage of the Common Areas and will be evidenced by a revision of or an addition to the Site Plan which will be filed Of Record. In addition, Declarant reserves the right, but will not have the obligation, to convey to the Community Association at any time and from time to time any portion of the Additional Property, such real property to be conveyed to the Community Association as an addition to the Common Areas and subject to the provisions of Section 2.2.

7.7 Fire Breaks. The Declarant reserves unto itself, its successors and assigns a perpetual, alienable and releasable easement and right on and over and under any property to cut fire breaks and other activities which in the opinion of the Declarant are necessary or desirable to control fires on any property, or any improvements thereon. Entrance upon property pursuant to the provisions of this Section will not be deemed a trespass.

7.8 Easements for Utilities. There is hereby reserved for the benefit of Declarant, the Community Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement, as well as the power to grant and accept easements to and from any public authority or agency, public service district, public or private utility, or other person, upon, over, under, and across (a) all of the Common Areas in accordance with this Declaration; (b) all portions of the Recreational Amenities in which improvements are not constructed or erected; (c) those strips of land, ten (10') feet in width, running adjacent to and parallel with the front lines of Lots, and twenty (20') feet in width running ten (10') feet on either side of the side lot line of each Lot, not to conflict with any drainage easements thereon, and as further shown on the Site Plan; and

BME 358PG285

(d) such other such easement areas shown on any Site Plan or recited in any Supplemental Declaration for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers and drainage systems and electrical, gas, telephone, water, and sewer lines. Such easements may be granted or accepted by Declarant, its successors or assigns, or by the Board of Directors, provided, however, that during the Declarant Control Period the Board of Directors must obtain the written consent of Declarant prior to granting and accepting any such easements. To the extent practical, in Declarant's sole discretion, all utility lines and facilities serving the Community and located therein will be located underground. By virtue of any such easement and facilities, it will be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Community so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonable necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

7.9 Easement for Walks, Trails, and Signs. There is hereby reserved for the benefit of Declarant, the Community Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement upon, over and across (a) all portions of the Common Areas in which improvements are not constructed or erected, and (b) all areas shown and noted on any Site Plan or described in any Supplemental Declaration for the installation maintenance, and use of sidewalks, leisure trails, bike paths, traffic directional signs, and related improvements.

7.10 Easements for the Community Association. There is hereby reserved a general right and easement for the benefit of the Community Association, its directors, officers, agents, and employees, including, but not limited to, any manager employed by the Community Association and any employees of such manager, to enter upon any Lot and/or Dwelling or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner directly affected thereby.

7.11 Easements for Additional Property. There is hereby reserved in Declarant, and its successors, assigns, and successors-in-title to the Additional Property, for the benefit of and as an appurtenance to the Additional Property and as a burden upon the Property, perpetual, nonexclusive rights and easements for (a) pedestrian, vehicular, access, ingress, egress, parking over, across, within, and on all private roads, sidewalks, trails, parking facilities, and lagoons, from time to time located within the Common Areas or within easements serving the Common Areas, (b) the installation, maintenance, repair, replacement, and use within the Common Areas, and those portions of properties encumbered pursuant to Section 7.8 of security systems and utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers, and electrical, gas, telephone, water a sewer, and master television antenna and/or cable system lines, and (c) drainage and discharge of surface water onto and across the Property, provided that such drainage and discharge will not materially damage or affect the Community or any improvements located thereon. Furthermore, in the event that the Additional Property or any portion or portions thereof are not added to the Community, then owners of residential units located therein will also have, and there

BKE 358PG286

is hereby reserved for their benefit and as an appurtenance to their respective residential units, the perpetual, nonexclusive right and easement of access to and use and enjoyment of all of the Recreational Amenities, on a basis which is equal and equivalent to that enjoyed by Owners; provided, however, that as a condition precedent to the use of the Recreational Amenities by any such owner of a residential unit within any portion of the Additional Property not so added to the Community, such owners will pay the Community Association Recreational Assessment as well as the portion of Annual Assessments attributable to the Recreational Amenities, for the use thereof, with such Annual Assessments to be calculated on the basis of an equitable proration between the Owners and those owners of residential units in such portions of the Additional Property who use the Recreational Amenities of those Common Expenses which are attributable to the maintenance, repair, replacement, and operation of the Recreational Amenities. Families, Tenants, and guests of such owners within such portions of the Additional Property who pay such Assessments will also have access to and use of the Recreational Amenities on an equal and equivalent basis as that enjoyed by families, Tenants, and guests of Owners, respectively.

7.12 Maintenance Easement. There is hereby reserved for the benefit of Declarant, the Community Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon any property subject to this Declaration for the purpose of providing insect and reptile control, mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Community, provided that such easements will not impose any duty or obligation upon Declarant or the Community Association to perform any such actions, or to provide garbage or trash removal services. Furthermore, it is hereby reserved for the benefit of the Declarant, the Community Association and their respective agents, employees, successors and assigns, an alienable, transferable, and perpetual right and easement, but not the obligation, to enter upon any unimproved portions of properties subject to this Declaration which are located within twenty (20') feet from the water's edge of any lagoon, pond or other body of water within the Community for the purpose of (a) mowing such area and keeping the same clear and free from unsightly growth and trash, (b) maintaining such bodies of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards, and (c) installing, constructing, repairing, replacing, and maintaining bulkheads, provided that the foregoing reservation of easements will not be deemed to limit the responsibility therefor by Owners under Section 9.1 hereof. The costs thereof incurred as a result of the action or inaction of any Owner will be paid by such Owner.

7.13 Environmental Easement. There is hereby reserved for the benefit of Declarant, the Community Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all unimproved portions of properties subject to this Declaration for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board of Directors, the Architectural Review Board, or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

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7.14 Wells and Effluent. There is hereby reserved for the benefit of Declarant, and its affiliates, agents, employees, successors, assigns, and its licensees an alienable, transferable, and perpetual right and easement (a) to pump water from lagoons, ponds, and other bodies of water located within the Community for the purpose of irrigating any portions of the Community, (b) to drill, install, locate, maintain, and use wells, pumping stations, water towers, siltation basins and tanks, and related water and sewer treatment facilities and systems within the Common Areas, or (c) to spray or locate any treated sewage effluent within the Common Areas, or upon any Lot or upon unimproved portions of any other property subject to this Declaration, with the permission of the appropriate Owner.

7.15 Easements Deemed Granted and Reserved. All conveyances of a Lot hereunder, whether by the Developer or otherwise, will be deemed to have granted and reserved, as the context will require, all easements set forth in this Declaration, including, but not limited to, those set forth in this Article 7.

7.16 No Partition. There will be no judicial partition of the Community or any part thereof, nor will any person acquiring any interest in the Community or any part thereof seek any such judicial partition unless the Community has been removed from the provisions of this Declaration.

#### ARTICLE 8. MEMBERSHIP

8.1 Membership. Every Owner, including the Declarant, of a Lot and Dwelling will be a Member of the Community Association. Membership will be appurtenant to and may not be separated from ownership of any Lot or and ownership of a Lot will be the sole qualification for such membership. In the event that fee title to a Lot or Dwelling is transferred or otherwise conveyed, the membership in the Community Association which is appurtenant thereto will automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest will not terminate or otherwise affect an Owner's membership in the Community Association.

8.2 Voting Rights. The Community Association will have two (2) types of voting memberships which are as follows:

- TYPE A: Type A Members will be Owners (including the Declarant) of Lots and Dwellings. A Type A Member will be entitled to one (1) vote for each Lot and Dwelling owned.
- TYPE B: The Type B Member will be the Declarant or its designated assign. The Type B Member will be entitled to one (1) vote for each vote held by Type A Members, plus two (2) votes during the Declarant Control Period.



Thereafter, the Type B Member will exercise votes only as to its Type A Memberships.

Notwithstanding the foregoing to the contrary, the Club shall at all times have the right to vote 25% of all authorized votes based on its obligation to pay 25% of all Common Expenses and Assessments.

Payment of Special Assessments or Emergency Special Assessments will not entitle Type A Members to additional votes.

**8.2.1 Voting By Multiple Owners.** When any property of a Type A Member of the Community Association is owned Of Record in the name of two or more persons, other than husband and wife, or entities, whether fiduciaries, or in any manner of joint or common ownership, the vote for such Lot or Dwelling will be exercised as such co-Owners determine among themselves and advise the Secretary of the Community Association in writing prior to any meeting; or the vote will be exercised by such co-Owner, or his duly appointed proxy, as will be designated in a writing by all co-Owners recorded in the R.M.C. Office for Charleston County, a copy of which will be delivered to the Secretary of the Community Association and will remain effective for all meeting until revoked by the co-Owners in a similar writing or until such designation terminates pursuant to the terms of such writing.

**8.3 Governance.** The Community Association will be governed by a Board of Directors consisting of Three (3), Five (5), Seven (7), or Nine (9) members. Initially, the Board will consist of Three (3) members, with the number in subsequent years to be determined by the members of the Board of Directors as provided for in the Bylaws of the Community Association.

**8.4 Election of the Board of Directors.** Each Member of Types A and B membership classes will be entitled to as many votes as equals the number of votes he is entitled to, based on his ownership of one or more of the various classifications of property or property interests as computed by the formula set out hereinabove in Section 8.2. All votes must be cast in whole numbers and not fractions thereof. Members are divided into classes for the sole purpose of computing voting rights and will not vote as a class.

**8.5 Special Meetings of Members.** Where specifically provided for herein, or on call of the Board of Directors or the person authorized to do so by the Bylaws, the Community Association will hold special meetings of Members to approve or reject such actions proposed to be taken by the Community Association. The Community Association will notify the Members of the date, time and place of such special meeting no fewer than ten (10) not more than sixty (60) days before the meeting date. Such notice will include a description of the purpose for which the meeting is called and will provide for voting by proxy.

**8.6 Quorum For Meetings.** The quorum required for any action which is subject to a vote of the Members at an open meeting of the Community Association will be as follows:

BKE 358PG289

(a) At any meeting, the presence of Members representing one-third (1/3) of the votes of all Members, in person or by proxy, will constitute a quorum for the transaction of business; provided, however, if the required quorum is not present, another meeting may be called, not earlier than sixty (60) days following the first meeting, and the required quorum at the subsequent meeting will be the Members present, in person or by proxy, and entitled to vote. Unless otherwise provided, any reference hereafter to "votes cast" at a duly called meeting will be construed to be subject to the quorum requirements established by this Section 8.6, and any other requirements for such duly called meeting which may be established by the Bylaws of the Community Association. This provision will not apply when the proposed action is the amendment of this Declaration and the quorum requirement established by Section 17.3 will govern in that instance.

8.6.2 Notice of Meetings. Notice of any meetings will be given to the Members by the Secretary. Notice may be given to each Member either personally or by sending a copy of the notice through the mail, postage thereon fully prepaid, to his address appearing on the books of the Community Association. Each Member will register his address with the Secretary and notices of meetings will be mailed to such address. Notice of any meeting, regular or special, will be mailed not more than sixty (60) days, and not fewer than ten (10) days in advance of the meeting and will set forth the date, time and place of the meeting and in general the nature of the business to be transacted; provided, however, that if the business of any meeting will involve and be governed by this Declaration or any action for which other provision is made in the Bylaws, notice of such meeting will be given or sent as herein or therein provided.

8.7 Proxies and referendum. All Members of the Community Association may vote and transact business at any meeting of the Community Association by proxy authorized in writing, and in accordance with the By-Laws. Furthermore, the Board of Directors will be authorized to conduct a vote of the Members by Referendum. Notwithstanding the foregoing, Members will irrevocably appoint Declarant as their attorney-in-fact pursuant to Section 16.1.1 herein to vote on those matters reserved to and designated for Declarant, as set forth in that Section.

8.8 Voting By Proxy. When required by the Board of Directors, there will be sent with notices of regular or special meetings of the Community Association, a statement of certain motions to be introduced for a vote of the Members and a ballot in the form of a proxy on which each Member may, subject to Section 16.1.1 herein, vote for or against the motion. Each proxy which is presented at such meeting will be counted in calculating the quorum requirements set out in Section 8.6. Provided, however, such proxies will not be counted in determining whether a quorum is present to vote upon motions not appearing on the proxy.

## ARTICLE 9. MAINTENANCE

9.1 Responsibilities of Owners. Unless specifically identified herein as the responsibility of the Community Association, all maintenance and repair of Lots and Dwellings, or the marsh and waterfront property adjacent to any such property, together with all other improvements thereon or

therein and all lawns, landscaping, and grounds on and within such property will be the responsibility of the Owner thereof. Each Owner will be responsible for maintaining his or its property in a neat, clean, and sanitary condition, and such responsibility will include the maintenance and care of all exterior surfaces of all Dwellings, buildings, and other structures and all lawns, trees, shrubs, hedges, grass, and other landscaping. Furthermore, all docks, wharves, bulkheads, or boat slips appurtenant to or located within such property or the marsh and waterfront property adjacent thereto, will be maintained by the Owner of such property, so that such structures are in good repair and are clean and orderly in appearance at all times, and all wood, concrete, or metal located above the high water mark, exclusive of pilings, will be painted or otherwise treated with preservatives in an attractive manner. As provided in Section 9.2.2 hereof, each Owner will also be obligated to pay for the costs incurred by the Community Association for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge. No Owner will (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Dwelling, building or other structure, or the landscaping, grounds, or other improvements within his or its property unless such decoration, change, or alteration is first approved, in writing, by the Architectural Review Board as provided in Article 6 hereof, or (ii) do any work which, in the reasonable opinion of the Architectural Review Board, would jeopardize the soundness and safety of the Community, reduce the value thereof, or impair any easement or hereditament thereto, without in every such case obtaining the written approval of the Architectural Review Board and the Owners, and the Mortgagees of property directly affected thereby or benefitting from such easement or hereditament.

## 9.2 Community Association's Responsibility.

9.2.1 General. Except as may be herein otherwise specifically provided, the Community Association will maintain and keep in good repair all portions of the Common Areas and any easement area encumbering properties of Owners for which the Community Association is responsible under this Declaration, including responsibility prior to transfer to the Community Association in accordance with Section 2.5, or any Supplemental Declaration, which responsibility will include the maintenance, repair, and replacement of (a) the Recreational Amenities, (b) all drainage not under the care of the Master Association, and walking, ingress and egress easements shown and noted on the Site Plan, (c) all private roads, road shoulders, walks, trails, harbors, lagoons, ponds, parking lots, landscaped areas, and other improvements situated within the Common Areas or easements, (d) security systems and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of its said properties and which are not maintained by a public authority, public service district, public or private utility, or other person, and (e) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon its said properties. The Community Association will not be liable for injury or damage to any person or property (i) caused by the elements or by any Owner or any other person, (ii) resulting from any rain or other surface water which may leak or flow from any portion of its properties, or (iii) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Community Association, becoming out of repair. Nor will the Community Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of its properties or any other portion of the Property. No diminution or abatement of Assessments or

Recreational Assessment will be claimed or allowed by reason of any alleged failure of the Community Association to take some action or to perform some function required to be taken or performed by the Community Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Community Association, or from any action taken by the Community Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments and Recreational Assessment being a separate and independent covenant on the part of each Owner.

9.2.2 Work In Behalf of Owners. In the event that Declarant or the Board of Directors determines that: (a) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair, or replacement of items for which he or it is responsible hereunder, or (b) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Community Association hereunder is caused through the willful or negligent act of an Owner, his family, Tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Community Association, except in the event of an emergency situation, may give such Owner written notice in accordance with Section 16.15 of Declarant's or the Community Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner, and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed necessary. Except in the event of emergency situations, such Owner will have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15)-day period, to commence said maintenance, cleaning, repair, or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, Declarant or the Community Association may provide (but will not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner and said cost will be added to and become a part of the Assessment to which such Owner and his property is subject and will become a lien against such property. In the event that Declarant undertakes such maintenance, cleaning, repair, or replacement, the Community Association will promptly reimburse Declarant for Declarant's costs and expenses.

## ARTICLE 10. INSURANCE AND CASUALTY LOSSES

### 10.1 Insurance.

10.1.1 Community Association's Property Insurance. The Board of Directors or its duly authorized agents will have the authority to obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Community Association. Such coverage will insure all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed

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reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.

10.1.2 Community Association's Liability Insurance. The Board or its duly authorized agents will have the authority to and will obtain and continue in effect a public liability policy covering all the Common Areas and all damage or injury caused by the negligence of the Community Association, its Members, its directors and officers, or any of its agents. Such public liability policy will provide such coverages as are determined to be necessary by the Board of Directors.

10.1.3 Community Association's Other Insurance. The Board or its duly authorized agents will have the authority and may obtain (a) workers' compensation insurance to the extent necessary to comply with any applicable laws and (b) other types and amounts of insurance as may be determined by the Board to be necessary or desirable, including, but not limited to, fidelity and directors' and officers' liability coverage.

10.1.4 Community Association's Policies. All such insurance coverage obtained by the Board of Directors will be written in the name of the Community Association as trustee for each of the Owners and costs of all such coverage will be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Community Association and hereafter in force with respect to the Community will be vested in the Board of Directors; provided, however, that no mortgagee or other security holder of the Common Areas having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Insofar as permitted by law, the Community Association will be required to make every effort to secure insurance policies with the provisions hereinafter set forth:

(a) All policies will be written with a company licensed to do business in the State of South Carolina and holding a rating of A or better in such financial categories as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best possible rating.

(b) All property insurance policies will be for the benefit of the Owners and their Mortgagees as their interests may appear.

(c) All policies will contain a waiver of the insurer's right to cancel without first giving thirty (30) days' prior written notice of such cancellation to the Community Association and to any Mortgagee to which a mortgagee endorsement has been issued.

(d) In no event will the insurance coverage obtained and maintained by the Community Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees, and all policies will contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual Owners or their Mortgagees.

(e) All policies will contain a waiver of subrogation by the insurer as to any claims against the Community Association, the Community Association's directors and officers, the Owners, and their respective families, servants, agents, Tenants, guests, and invitees, including, without limitation, the Community Association's manager.

(f) All policies will contain a provision that no policy may be canceled, invalidated, or suspended on account of the conduct of one or more of the individual Owners, or their respective families, servants, agents, employees, Tenants, guests, and invitees, or on account of the acts of any director, officer, employee, or agent of the Community Association or of its manager, without prior demand in writing delivered to the Community Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.

(g) All liability insurance will contain cross-liability endorsements to cover liability of the Community Association to an individual Owner.

10.1.5 Owner's Insurance. It will be the individual responsibility of each Owner at his own expense to provide, as he sees fit, public liability, property damage, title, and other insurance with respect to his or its own property. The Board of Directors may require all Owners to carry public liability and property damage insurance with respect to their respective properties and to furnish copies or certificates thereof to the Community Association.

10.2 Damage or Destruction to Common Areas. Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Community Association, the Board of Directors or its duly authorized agent will proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board will obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article 10, means repairing or restoring the damaged property substantially to the same condition in which it existed prior to the fire or other casualty. Unless within sixty (60) days following any damage or destruction to all or a part of the Common Areas, Declarant, for so long as Declarant owns any of the Property primarily for development or sale or has the unexpired option to add the Additional Property or any portion thereof to the Community, and the Board acting on the vote of at least seventy-five percent (75%) of the vote of the Members present, in person or by proxy, and entitled to vote at a duly called meeting of the Members, will otherwise agree, the Community Association will restore or replace such damaged improvements. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a Special Assessment against all Owners, without the necessity of a vote pursuant to Section 13.5 hereof, such Special Assessment to be in an amount sufficient to provide funds to pay such excess cost or repair or reconstruction. Such a Special Assessment will be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional Assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Community Association under and by virtue of such Assessments will be held by and for the benefit of the Community Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and Assessments will be disbursed by the Community

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Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board of Directors. Any proceeds remaining after defraying such costs will be retained by and for the benefit of the Community Association. If it is determined that the damage or destruction for which the insurance proceeds are paid will not be repaired or reconstructed, such proceeds will be retained by and for the benefit of the Community Association, and the ruins of the Common Areas damaged or destroyed by fire or other casualty will be cleared and the Common Areas left in a clean, orderly, safe, and sightly condition.

10.3 Damage or Destruction to Owners' Properties. In the event of damage or destruction by fire or other casualty to any property subject to this Declaration, or the improvements thereon, and in the further event that the Owner responsible for the repair and replacement of such property elects not to repair or rebuild, such Owner will promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such property in a clean, orderly, safe, and sightly condition. Should such Owner elect to repair or rebuild such property or other improvements thereon, such Owner will repair or rebuild substantially to the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions, and provision of this Declaration (including, without limitation, the procedures and architectural guidelines under Article 6) and all applicable zoning, subdivision, building, and other governmental regulations. All such work or repair or construction will be commenced promptly following such damage or destruction and will be carried through diligently to conclusion.

#### ARTICLE 11. CONDEMNATION

11.1 Condemnation of Common Areas. Whenever all or any part of the Common Areas of the Community will be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board acting on the affirmative vote of seventy-five percent (75%) of the votes cast by Members present, in person or by proxy, and entitled to vote at a duly called meeting of the Members, and of Declarant, for so long as Declarant owns any of the Property primarily for development or sale or has the unexpired option to add the Additional Property or any portion thereof to the Community, the award or proceeds made or collected for such taking or sale in lieu thereof will be payable to the Community Association and will be disbursed or held as follows:

11.1.1 Common Areas With Improvements. If the taking or sale in lieu thereof involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, for so long as Declarant owns any of the Property primarily for development or sale or has the unexpired option to add the Additional Property or any portion thereof to the Community, and the Board, acting on the vote of seventy-five percent (75%) of the votes cast by the Members present, in person or by proxy, and entitled to vote at a duly called meeting of the Members, will otherwise agree, the Community Association will restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas which are available therefore, in accordance with the plans approved by the Board of Directors, the Architectural Review Board, and by Declarant during the Declarant Control Period. If the awards or proceeds are not sufficient to defray the cost of such repair and

replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a Special Assessment against all Owners, without the necessity of a vote pursuant to Section 13.5, such Special Assessment to be in an amount sufficient to provide funds to pay such excess cost or repair or reconstruction. Such a Special Assessment will be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional Special Assessments may be made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds will be retained by and for the benefit of the Community Association.

11.1.2 Common Areas Without Improvements. If the taking or sale in lieu thereof does not involve any improvements to the Common Areas, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds, or net funds will be retained by and for the benefit of the Community Association.

11.1.3 Including Owner's Property. If the taking or sale in lieu thereof includes all or any part of an Owner's property and also includes any part of the Common Areas, then a court of competent jurisdiction will apportion such award or proceeds and such award or proceeds will be disbursed to the Community Association and the Owners so affected so as to give just compensation to the Owners for their interest in such property; provided, however, such apportionment may instead be resolved by the agreement of (i) the Board of Directors, (ii) the Owners of all properties wholly or partially taken or sold, together with the Mortgagees for each such property, and (iii) Declarant, for so long as Declarant owns any of the Property primarily for development or sale or has the unexpired option to add the Additional Property or any portion thereof to the Community.

## 11.2 Condemnation of Owners' Properties.

11.2.1 Election Not To Restore. In the event that all or any part of a property subject to this Declaration, or any improvements thereon is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and in the further event that the Owner thereof elects not to restore the remainder of such property, then the Owner making such election will promptly clear away any remaining improvements damaged or destroyed by such taking or conveyance and will leave such property and any remaining undamaged improvements thereon in a clean, orderly, safe, and sightly condition. In addition, if the size or configuration of such property remaining after such taking or conveyance is insufficient to permit the restoration of the remaining improvements thereon or therein to their condition prior to such taking or conveyance in compliance with all applicable standards, restrictions, and provision of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations, then such Owner will have the option, after clearing away all remaining improvements or portions thereof and placing the remainder in a clean, orderly, safe, and sightly condition referred to above, of deeding the remaining portion of the property to the Community Association as a part of the Common Areas, and thereafter any such Owner will not have any further voting rights or membership rights or privileges in the Community Association or with respect to the Community and will not be subject to any further



BKE 358PG296

Assessments imposed by the Community Association and payable after the date of such deed and attributable to such property deeded to the Community Association.

11.2.2 Election to Restore. In the event that any part of a property subject to this Declaration, or any improvements thereon, is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and if the Owner thereof elects to restore the remainder of the property, such Owner making such election will restore such remainder thereof as nearly as practicable to the same condition it was in prior to such taking or conveyance and in accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work of restoration will be commenced promptly following such taking or conveyance and will be carried through diligently to conclusion.

## ARTICLE 12. FUNCTIONS OF THE COMMUNITY ASSOCIATION

12.1 Board of Directors and Officers. The Community Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration, will be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto) and will keep the same in a good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions thereof. Except to the extent otherwise required by the provisions of the Act, this Declaration, the By-Laws, or the Articles of Incorporation, the powers herein or otherwise granted to the Community Association may be exercised by the Board of Directors, acting through the officers of the Community Association, without any further consent or action on the part of the Owners. As provided in Section 16.1 hereof and notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the Community, Declarant will have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Community Association during the Declarant Control Period. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling vests in Declarant such authority to appoint and remove directors and officers of the Community Association as provided by this Section 12.1 and by Section 16.1 hereof.

12.2 Duties and Powers. The duties and powers of the Community Association will be those set forth in the provision of the Act, this Declaration, the By-Laws, and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Community Association; provided; however, that if there are conflicts or inconsistencies between the Act, this Declaration, the By-Laws, or the Articles of Incorporation, the provisions of the Act, this Declaration, the Articles of Incorporation, and the By-Laws, in that order, will prevail, and each Owner of a property within the Community, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Community Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonable to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Community Association will include, but will not be limited

BKE 358PG297

to, the power to purchase one or more properties subject to this Declaration and to hold, lease, mortgage, sell, and convey the same. Such duties may include, but will not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or by billing directly to the Owners, to furnish trash collections, water, sewer, and/or security service for the properties subject to this Declaration. Notwithstanding the foregoing provision of this Section 12.2 or any other provision of this Declaration to the contrary, during the Declarant Control Period the Community Association will not, without the consent of Declarant, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common Areas.

12.2.1 Ownership of Properties. The Community Association will be authorized to own, purchase, lease, use under any use agreement, and maintain (subject to the requirements of any Federal, State or Local Governing body of South Carolina) Common Areas, equipment, furnishings, and improvements devoted to the uses and purposes expressed and implied in this Declaration, including, but not limited to, the following uses:

(a) For sidewalks, walking paths or trails, and bicycle paths throughout the Property;

(b) For transportation facilities throughout the Property other than privately owned automobiles, e.g. buses, electric vehicles, etc.

(c) For security services including security stations, maintenance building and/or guardhouses;

(d) For providing any of the services which the Community Association is authorized to offer under Section 12.2.2 below;

(e) For purposes set out in deeds or long-term leases or use agreements by which Common Areas are conveyed or leased by which use rights are granted to the Community Association;

(f) For lakes, play fields, lagoons, waterways, drainage areas and easements, wildlife areas, fishing facilities;

(g) For water and sewage facilities and any other utilities, if not adequately provided by a private utility or public body; and

(h) For renourishment and installation and/or maintenance of any shore protection device, including, but not limited to, shore revetments and groins.

12.2.2 Services. The Community Association will be authorized (unless prohibited by the requirements of any Federal, State or Local governing body) to provide such services required to promote the uses and purposes for which the Community Association is formed as expressed or implied in this Declaration, including, but not limited to, the following services:

(a) Cleanup and maintenance of all private roads, roadways, road shoulders, roadway medians, parkways, lakes, lagoons, waterways, drainage areas and easements, marshes and Common Areas within the Property and also all public properties which are located within or in a reasonable proximity to the Property such that their deterioration would affect the appearance of the Property as a whole;

(b) Landscaping of sidewalks and walking paths and any Common Areas;

(c) Lighting of sidewalks and walking paths throughout the Property;

(d) Security provisions including, but not limited to, the employment of security guards, maintenance of electronic and other security devices and control centers for the protection of persons and property within the Property and assistance to the local police and sheriff departments in the apprehension and prosecution of persons who violate the laws of South Carolina within the Property;

(e) Insect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Directors of the Community Association to supplement the service provided by the state and local governments;

(f) The services necessary or desirable in the judgment of the Board of Directors of the Community Association to carry out the Community Association's obligations and business under the terms of this Declaration and to collect regular Annual Assessments, Special Assessments, Emergency Special Assessment, Recreational Assessment and other fees and charges collectable from the Owners hereunder;

(g) To take any and all actions necessary to enforce these and all covenants and restrictions affecting the Property and to perform any of the functions or services delegated to the Community Association in any covenants or restrictions applicable to the Property;

(h) To set up and operate an architectural review board in the event that the Community Association is assigned the Architectural Control function by the Declarant pursuant to Section 6.2.1;

(i) To conduct recreation, sport, craft, and cultural programs of interest to Members, their children and guests;

(j) To provide legal and scientific resources for the improvement of air and water quality within the Property;

(k) To provide safety equipment for storm emergencies;

(l) To construct improvements on Common Areas for use for any of the purposes or as may be required to provide the services as authorized in this Section;

BKE 358PG299

(m) To provide administrative services including but not limited to legal, accounting and financial; and communications services informing Members of activities, notice of Meetings, Referendums, etc., incident to the above listed services;

(n) To provide liability and hazard insurance covering improvements and activities on Common Areas;

(o) To provide water, sewage, and any necessary utility services not provided by a public body, private utility or the Declarant;

(p) To provide, conduct, or maintain water pollution and shoreline erosion abatement measures including, without limitation, maintenance and repair of shore revetments and groins;

(q) To provide any or all of the above listed services to another association or Owners of real property under a contract, the terms of which must be approved by the Board of Directors; and

(r) To provide for hearings and appeal process for violations of rules and regulations.

12.3 Agreements. Subject to the prior approval of Declarant during the Declarant Control Period, all agreements and determinations lawfully authorized by the Board of Directors will be binding upon the Community Association and all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community will comply with and be subject to the authorized actions of the Board of Directors. In performing its responsibilities hereunder, the Community Association, through its Board of Directors, will have the authority to delegate to persons of its choice such duties of the Community Association as may be determined by the Board of Directors. In furtherance of the foregoing and not in limitation thereof, the Community Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Community Association will deem necessary or desirable for the proper operation of the Community, whether such personnel are furnished or employed directly by the Community Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager will be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board of Directors, exercise all of the powers and will be responsible for the performance of all the duties of the Community Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers, or Members of the Community Association by this Declaration or the By-Laws. Such manager may be an individual, corporation, or other legal entity, as the Board of Directors will determine, and may be bonded in such a manner as the Board of Directors may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Community Association may pay for, and the Board of Directors may hire and contract for, such legal and accounting services as are necessary

BKE 358PG300

or desirable in connection with the operation of the Community or the enforcement of this Declaration, the By-Laws, or the rules and regulations of the Community Association.

12.3.1 Management Agreement. During the Declarant Control Period, Briar's Creek Management, Inc. or an affiliate may be employed as the manager of the Community Association and the Community, with the option on the part of Briar's Creek Management, Inc. or its affiliate to renew such employment for three (3) successive one-year terms from and after the termination of the Declarant Control Period. Every grantee of any interest in the Community, by acceptance of a deed or other conveyance of such interest, will be deemed to ratify such management agreement.

12.4 Mortgage or Pledge. Subject to the provisions of Section 7.2.1, the Board of Directors of the Community Association will have the power and authority to mortgage the property of the Community Association and to pledge the revenues of the Community Association as security for loans made to the Community Association which loans will be used by the Community Association in performing its authorized functions. The Declarant may make loans to the Community Association, subject to approval by the Declarant of the use to which such loan proceeds will be put and the terms pursuant to which such loans will be repaid. Notwithstanding anything in this Declaration to the contrary, the Community Association will not be allowed to reduce the limits of the regular Annual Assessment at any time there are outstanding any amounts due the Declarant as repayment of any loans made by the Declarant to the Community Association.

12.5 Personal Property and Real Property for Common Use. The Community Association, through action of its Board of Directors, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Community Association and the proceeds thereof, after deducting therefrom the costs incurred by the Community Association in acquiring or selling the same, will be held by and for the benefit of the Community Association. The shares of the Owners in the funds and assets of the Community Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot or Dwelling also transfers the membership in the Community Association which is an appurtenance to such Lot and Dwelling.

12.6 Rules and Regulations. As provided in Article 14 hereof, the Community Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Lots, Dwellings, and Common Areas, which rules and regulations will be consistent with the rights and duties established by this Declaration.

12.7 Reduction in Services. During the first 2 calendar years that the Board of Directors determines, the Board of Directors of the Community Association will define and list a minimum level of services which will be furnished by the Community Association. So long as the Declarant is engaged in the development of properties which are subject to the terms of this Declaration, the Community Association will not reduce the level of services it furnishes below such minimum level. Such minimum level of service will expressly include an obligation of the Community

BKE 358PG301

Association to maintain the Common Areas and pay the costs and expenses set forth in any lease or use agreement therefor.

12.8 Obligation of the Community Association. The Community Association will not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article except as specified in Section 12.7 above. The functions and services to be carried out or offered by the Community Association at any particular time will be determined by the Board of Directors of the Community Association taking into consideration the funds available to the Community Association and the needs of the Members of the Community Association. Special Assessments will be submitted for approval as herein provided. Subject to the provisions of Section 12.7 above, and for so long as Declarant retains its voting rights as a Type B Member, the functions and services which the Community Association is authorized to carry out or to provide may be added or reduced at any time upon the affirmative vote of a majority of the votes cast by Members present, in person or by proxy, and entitled to vote at a duly called special meeting of the Members. At such time as Declarant no longer has voting rights as a Type B Member, pursuant to Section 8.2 herein, the functions and services which the Community Association is authorized to carry out or to provide may be added or reduced at any time upon the affirmative vote of two-thirds (2/3) of the votes cast by the Members present, in person or by proxy, and entitled to vote at a duly called meeting of the Members.

### ARTICLE 13. ASSESSMENTS

13.1 Purpose of Assessments. The Assessments for Common Expenses provided for herein will be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Community, and maintaining the Community and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors.

13.2 Creation of Lien and Personal Obligation of Assessments. Each Owner, by acceptance of a deed or other conveyance thereof, whether or not it will be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Community Association: (a) Annual Assessments, such Assessments to be established and collected as provided in this Section 13.2, (b) Special Assessments, such Assessments to be established and collected as provided in Section 13.5, (c) Emergency Special Assessments, such Assessments to be established and collected as provided in Section 13.6, (d) individual or specific Assessments against any particular property which are established pursuant to the terms of this Declaration, including, but not limited to, fines as may be imposed against a property in accordance with Article 14 hereof. Any such Assessments and any Recreational Assessment payable, together with late charges, simple interest at a rate established from time to time by the Board of Directors, and court costs and attorneys' fees incurred to enforce or collect such Assessments or Recreational Assessment, will be an equitable charge and a continuing lien upon the property of the Owner thereof who is responsible for payment. Each Owner will be personally liable for Assessments or Recreational Assessment coming due while he is the Owner of a property, and his grantee will take title to such property subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his

ONE 358PG302

grantor any amounts paid by such grantee therefor; provided, however, the lien for unpaid Assessments or Recreational Assessment will be subordinate to the lien of any unpaid taxes and any Institutional Mortgage or Mortgage held by Declarant, and their respective successors and assigns. Sale or transfer of any Lot or Dwelling will not affect the lien of the Assessments; however, the sale or transfer of any Lot or Dwelling, which is subject to any Institutional Mortgage or Mortgage of Declarant, pursuant to a decree of foreclosure or any proceeding or conveyance in lieu of foreclosure thereof, will extinguish the lien of the Assessments as to payment thereof which became due prior to such sale or transfer. In the event of co-ownership of any property subject to this Declaration, all of such co-Owners will be jointly and severally liable for the entire amount of such Assessments and Recreational Assessment. Assessments and Recreational Assessment will be paid in such manner and on such dates as may be fixed by the Board of Directors in accordance with Section 13.3.5, provided that unless otherwise provided by the Board, the Annual Assessments will be paid in equal monthly installments.

13.3 Establishment of Annual Assessment. It will be the duty of the Board of Directors at least thirty (30) days prior to the first day of the Community Association's fiscal year to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Community Association. The Board will cause the budget and the proposed total of the Annual Assessments to be levied against properties subject to this Declaration for the following year to be delivered to each Owner at least fifteen (15) days prior to such meeting. The total Annual Assessments will be divided among Lots and Dwellings equally, each unimproved Lot bearing the same Assessment as a Dwelling.

13.3.1 Additional Property. Upon the addition of any Additional Property pursuant to Section 2.2, Lots within such Additional Property will be assessed or charged as hereinabove provided and on an equal basis with the then existing Lots subject to this Declaration. In such event, the Community Association's budget will be accordingly revised by the Board of Directors, without the necessity of approval by the Owners, to include any Common Expenses related to such additional property.

13.3.2 Approval of Annual Assessments. The annual budget and Annual Assessments, as determined by the Board of Directors, as hereinabove provided, will become effective unless disapproved (a) by the Declarant during the Declarant Control Period, and thereafter, (b) by a majority of the votes cast, in person or by proxy, by Members entitled to vote at a duly called meeting. Notwithstanding the foregoing, in the event the proposed budget and Annual Assessments are not approved or the Board of Directors fails for any reason to determine the budget for the succeeding year and to set the Assessments, then and until such time as a budget and Annual Assessment will have been determined as provided herein, the budget and Annual Assessments for the succeeding year will be the Maximum Budget and Maximum Annual Assessments calculated in accordance with Section 13.4.

13.3.3 Special Meeting to Increase. If the Board of Directors of the Community Association, by majority vote, determines that the important and essential functions of the Community Association will not be properly funded in any year by the Annual Assessment herein

BKE 358PG303

provided, it may call a special meeting of the Members in accordance with the provisions of Section 8.5 herein requesting approval of a specified increase in such Assessment. The proposed increased Assessment will be levied upon the affirmative vote of two-thirds (2/3) of the votes cast by Members present, in person or by proxy, and entitled to vote at the special meeting. An increase in Annual Assessments in any year pursuant to a special meeting taken as aforesaid will in no way affect Annual Assessments for subsequent years.

13.3.4 Initial Annual Assessments. The initial Annual Assessment for all Owners of Lots and Dwellings for the calendar year in which the first Lot is sold shall be determined by the Declarant, which sum will cover the projected costs and expenses of the Community Association set forth in the initial budget for Phase I of the Community; provided, however, the Board of Directors may charge a lesser amount until such time as said improvements constituting Common Areas have been substantially completed.

13.3.5 Billing of Annual Assessments. The Annual Assessments may, in the sole discretion of the Board of Directors, be billed monthly, quarterly, semiannually or annually, and bills therefor will be due and payable thirty (30) days from the date of mailing of same.

13.3.6 Rounding. All Annual Assessments charged by the Community Association will be rounded off to the nearest dollar.

13.3.7 For Common Expenses. The Common Expenses to be funded by the Annual Assessments may include, but will not necessarily be limited to, the following:

- (a) Assessments charged against the Community Association and Owners by the Master Association;
- (b) management fees and expenses of administration, including legal and accounting fees;
- (c) utility charges for utilities serving the Common Areas and charges for other common services for the Community, including trash collection and security services, if any such services or charges are provided or paid by the Community Association;
- (d) the cost of any policies of insurance purchased for the benefit of all the Owners and the Community Association as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, and other insurance coverage determined by the Board to be in the interests of the Community Association and the Owners;
- (e) the expenses of maintenance, operation, and repair of those portions of the Common Areas which are the responsibility of the Community Association under the provisions of this Declaration;



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(f) the expenses of maintenance, operation, and repair of other amenities and facilities serving the Community, the maintenance, operation, and repair of which the Board from time to time determines to be in the best interest of the Community Association;

(g) the expenses of the Architectural Review Board, if the functions thereof are transferred and conveyed to the Community Association pursuant to Section 6.2.1, which are not defrayed by plan review charges;

(h) ad valorem real and personal property taxes assessed and levied against the Common Areas;

(i) the expenses for conducting recreational, cultural, or other related programs for the benefit of the Owners and their families, Tenants, guests, and invitees;

(j) such other expenses as may be determined from time to time by the Board of Directors of the Community Association to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Lots and/or Dwellings; and

(k) the establishment and maintenance of a reasonable reserve fund or funds (i) for maintenance, repair, and replacement of those portions of the Common Areas which are the responsibility of the Community Association and which must be maintained, repaired, or replaced on a periodic basis, (ii) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (iii) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors.

13.3.8 Reserve Funds. The Community Association may establish reserve funds from its regular Annual Assessments to be held in reserve in an interest drawing account or investments as a reserve for (a) major rehabilitation or major repairs to Common Areas, (b) for emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss, (c) recurring periodic maintenance, and (d) initial costs of any new service to be performed by the Community Association.

13.4 Determination of Maximum Budget and Maximum Annual Assessment. The Maximum Budget and Maximum Annual Assessments will be the greater of:

(a) The budget and Annual Assessments for the then current year, increased in proportion to the percentage increase, if any, for the then current year, in the "CPI-U," as hereinafter defined, from December of the preceding year to November of the then current year in which the said maximum budget and Annual Assessment is being determined, or by five (5%) percent, whichever is greater; or

(b) The budget and Annual Assessments for the year in which this Declaration is filed Of Record increased, to the year in which the said maximum budget and Annual Assessment

is being determined in proportion to the percentage increase, if any, in the "CPI-U," as hereinafter defined, from December of the year preceding the year in which this Declaration is filed Of Record to November of the year in which the said maximum budget and Annual Assessment is being determined, or by five (5%) percent per annum, compounded, whichever is greater.

The "CPI-U" will mean the Consumer Price Index for All Urban Consumers (1982-84=100), or, if such index is discontinued or revised, by reference to such other government index or computation with which it is replaced or which would produce substantially the same measure as would be obtained if such index had not been discontinued or revised.

13.4.2 Change in Maximum Amounts Upon Merger or Consolidation. The limitations of Section 12.4 will apply to any merger or consolidation in which the Community Association is authorized to participate under Section 2.2.3, and under the Bylaws of the Community Association.

13.5 Special Assessments for Improvements and Additions. In addition to the regular, Annual Assessments authorized by Section 13.3 hereof, the Community Association may levy Special Assessments, for the following purposes:

- (a) Construction or reconstruction, repair or replacement of capital improvements upon the Common Areas, including the necessary fixtures and personal property related thereto;
- (b) To provide for the necessary facilities and equipment to offer the services authorized herein;
- (c) To repay any loan made to the Community Association to enable it to perform the duties and functions authorized herein.

13.5.2 Approval of Special Assessments. Except as otherwise permitted in Sections 7.4.2, 10.2, 11.1 and 13.6 hereof, any Special Assessment will be approved by (i) Declarant during the Declarant Control period, and (ii) thereafter by two-thirds (2/3) of the votes cast by Members in person or by proxy, or responding to a mail Referendum within thirty (30) days of such mailing. Members so voting will be entitled to vote at a special meeting of the Members called for that purpose in accordance with the provisions of Section 8.5 herein. The notice of such special meeting or the Referendum will include one statement from the Directors favoring the Special Assessment and one statement from those Directors opposing the Special Assessment containing the reasons for those Directors' support and opposition for the Assessment. Neither statement will exceed five pages in length.

13.5.3 Apportionment. The proportion of each Special Assessment to be paid by the Owners of the various classifications of assessable property will be equal to the proportion of the regular Annual Assessments made for the Assessment year during which such Special Assessments are approved by the Members.

ME 358PG306

13.6 Emergency Special Assessments. In addition to the Annual Assessments authorized by Section 13.3 and the Special Assessment authorized by Section 13.5 hereof, the Community Association may levy Assessments for repairs, reconstruction, alterations or improvements due to emergencies of any type, as determined by the Declarant and/or the Board of Directors, in their sole discretion ("Emergency Special Assessment"). Any Emergency Special Assessment may be imposed without a vote of the Members.

13.7 Declarant's Properties. Anything contained herein to the contrary notwithstanding, Declarant will be exempt from the payment of Annual Assessments, Special Assessments and Emergency Special Assessments with respect to unimproved and unoccupied properties owned by the Declarant and subject to this Declaration. The Declarant hereby covenants and agrees, however, that during the Declarant Control Period it will annually elect either to pay an amount equal to the regular Assessment for each such Lot owned by it or to pay the difference between the amount of Assessments collected on all other Lots not owned by Declarant and the amount of actual expenditures by the Community Association during the fiscal year, but not in a sum greater than the regular Assessments Declarant would pay if not exempt therefrom. Unless the Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, the Declarant will be deemed to have elected to continue paying on the same basis as during the immediately preceding year. Furthermore, so long as the Declarant owns any Lot for sale or any portion of the Property (including any Additional Property which may be added thereto) which may be developed or upon which additional Lots are to be constructed, the Declarant may, but will not be obligated to, reduce the regular Assessment for any year to be paid by Owners of Lots within the Community. Any such reduction and funding by the Declarant will, in the Declarant's sole discretion, be (a) a contribution to the Community Association, (b) an advance against future regular Assessments due from said Declarant, or (c) a loan to the Community Association. The amount and character (contribution, advance or loan) of such payment by the Declarant will be conspicuously disclosed as a line item in the budget and will be made known to the Owners. The payment of such a subsidy in any year will under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Community Association and the Declarant. Any such payment by Declarant may be made in-kind.

13.8 Individual Assessments. Any expenses of the Community Association or the Declarant occasioned by the conduct of less than all of the Owners or by the family, Tenants, agents, guests, or invitees of any Owner will be specially assessed against such Owners and their respective Lots. Any other individual Assessments provided for in this Section 13.8 will be levied by the Board of Directors and the amount and due date of such Assessment so levied by the Board will be as specified by the Board.

13.9 Effect of Nonpayment; Remedies of the Community Association. Any Assessments or Recreational Assessment of an Owner or any portions thereof which are not paid when due will be delinquent. Any Assessment or Recreational Assessment delinquent for a period of more than ten (10) days after the date when due will incur a late charge in an amount as may be determined by the Board from time to time and, upon adoption of a policy therefor by the Board of Directors, will also commence to accrue simple interest at the rate set by the Board of Directors from time to time. A lien and equitable charge as herein provided for each Assessment or Recreational Charge

ME 358PG307

installment shall attach simultaneously as the same will become due and payable, and if an Assessment or Recreational Charge has not been paid within thirty (30) days, the entire unpaid balance of the Assessment or Recreational Charge installments remaining to be paid during the fiscal year may be accelerated by the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such Assessment or Recreational Charge will include interest as set by the Board of Directors from time to time on late payments, all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law. In the event that the Assessment or Recreational Charge remains unpaid after sixty (60) days from the original due date, the Community Association may, as the Board will determine, institute suite to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Section will be in favor of the Community Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Community Association and its agents the right and power to bring all actions against him personally for the collection of such Assessments and Recreational Assessment as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The Community Association will have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the Assessments and Recreational Assessment provided for herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot, and an Owner will remain personally liable for Assessments, Recreational Assessment, interest, and late charges which accrue prior to a sale, transfer, or other conveyance of his Lot.

13.10 Certificate. The Treasurer, any Assistant Treasurer, or the manager of the Community Association will, within ten (10) days of a written request and upon payment of a fee set from time to time by the Board of Directors, furnish to any Owner or such Owner's Mortgagee which requests the same, a certificate signed by the Treasurer, Assistant Treasurer, or manager setting forth whether the Assessments and Recreational Assessment for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest, and other penalty charges. Such certificate will be conclusive evidence against all but such Owner of payment of any Assessments and Recreational Assessment stated therein to have been paid.

13.11 Date of Commencement of Assessments. The Assessments provided for herein will commence as to property subject to this Declaration on the date on which such property is conveyed to a person other than Declarant and will be due and payable in such manner and on such schedule as the Board of Directors may provide. Annual Assessments, Special Assessments and Emergency Special Assessments will be adjusted for such property according to the number of months then remaining in the then fiscal year of the Community Association and the number of days then remaining in the month in which such property is first conveyed. Annual Assessments, Special Assessments and Emergency Special Assessments for properties in portions of the Additional Property hereafter submitted to the terms of this Declaration will commence with respect to each such property on the later of (i) the day on which such property is conveyed to a person other than Declarant, or (ii) the day the Supplemental Declaration so submitting such properties is filed Of Record. Annual Assessments, Special Assessments and Emergency Special Assessments for each such property will be adjusted according to the number of months then remaining in the fiscal year

E 358PG308

of the Community Association and the number of days then remaining in the month in which such Assessments commence.

13.11.1 Working Capital Collected At Closing. Each Owner of a property subject to this Declaration, other than Declarant, will pay to the Community Association a sum equal to two (2) months of the Annual Assessment for working capital. Such sums are and will remain separate and distinct from Annual Assessments and will not be considered advance payments of Annual Assessments. Each such Owner's share of working capital, as aforesaid, will be collected from such Owner upon his purchase of property subject to this Declaration, and must be transferred to the Community Association at the time of closing the conveyance from the Declarant to the Owner.

#### ARTICLE 14. RULE MAKING

14.1 Rules and Regulations. Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots and/or Dwellings and the Common Areas, and facilities located thereon, including, without limitation, the Recreational Amenities. In particular but without limitation, the Board of Directors may promulgate from time to time rules and regulations which will govern activities which may, in the judgment of the Board of Directors, be environmentally hazardous, such as application of fertilizers, pesticides, and other chemicals. Copies of such rules and regulations and amendments thereto will be furnished by the Community Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations will be binding upon the Owners, their families, Tenants, guests, invitees, servants, and agents, until and unless any such rule or regulation is specifically overruled, canceled, or modified by the Board of Directors or in a regular or special meeting of the Community Association by the vote of the Owners, in person or by proxy, holding a majority of the votes cast, provided that in the event of such vote, such action must also be approved by Declarant during the Declarant Control Period.

14.2 Authority and Enforcement. Subject to the provisions of Section 14.3 hereof, upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments or Recreational Assessment, the Board will have the power (i) to impose reasonable monetary fines which will constitute an equitable charge and a continuing lien upon the Lot, the Owners, Occupants, or guests of which are guilty of such violation, (ii) to suspend an Owner's right to vote in the Community Association, or (iii) to suspend an Owner's right (and the right of such Owner's family, guests, and Tenants and of the co-Owners of such Owner and their respective families, guests, and Tenants) to use any of the Common Areas and Recreational Amenities, and the Board will have the power to impose all or any combination of these sanctions; provided, however, an Owner's access to its property over the private roads and streets constituting Common Areas will not be terminated hereunder. An Owner will be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests, or Tenants or by his co-Owners or the family, guests, or Tenants of his co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days.

BKE 358PG309

14.3 Procedure. Except with respect to the failure to pay Assessments or Recreational Assessment, the Board will not impose a fine, suspend voting rights, or infringe upon or suspend any other rights of an Owner or other Occupant of the Community for violations of the Declaration, By-Laws, or any rules and regulations of the Community Association, unless and until the following procedure is followed:

14.3.1 Demand to Cease and Desist. Written demand to cease and desist from an alleged violation will be served upon the Owner responsible for such violation specifying:

- (a) The alleged violation;
- (b) The action required to abate the violation; and
- (c) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws, or of the rules and regulations of the Community Association may result in the imposition of sanctions after notice and hearing.

14.3.2 Notice of Hearing. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice, in accordance with Section 16.15 of a hearing to be held by the Board in executive session. The notice will contain:

- (a) The nature of the alleged violation;
- (b) The time and place of the hearing, which time will be not less than ten (10) days from the giving of the notice;
- (c) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and
- (d) The proposed sanction to be imposed.

14.3.3 Hearing. The hearing will be held in executive session of the Board of Directors pursuant to the notice and will afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard will be placed in the minutes of the meeting. Such proof will be deemed adequate if a copy of the notice together with a statement of the date and matter of delivery is entered by the officer, director, or other individual who delivered such notice. The notice requirement will be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction imposed, if any.

BKE 358PG310

**ARTICLE 15. ALTERNATIVE DISPUTE RESOLUTION & LITIGATION**

15.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Community Association, Owners and any person not otherwise subject to the Declaration who agrees to submit to this Article 15 (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes against the Declarant and/or the Community Association involving this Declaration or the Community, and to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes (including those in the nature of counterclaims or cross-claims) between such Bound Party and the Declarant and/or the Community Association involving the Declaration, the Community Association Bylaws, the rules and regulations of the Community Association or the Community itself, including without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement thereof (collectively "Claims"), except for "Exempt Claims" under Section 15.2, will be subject to the procedures set forth in Section 15.3.

15.2 Exempt Claims. The following Claims ("Exempt Claims") will be exempt from the provisions of Section 15.3:

15.2.1 any suit by the Community Association against any Bound Party to enforce the provisions of Article 13, which concerns Assessments or other charges hereunder; and

15.2.2 any suit by the Community Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve any enforcement power of the Community Association under Article 6 until such matter may be resolved on the merits pursuant to Section 15.3 below.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 15.3, but there will be no obligation to do so.

15.3 Mandatory Procedures for Non-Exempt Claims. Any Bound Party having a Claim ("Claimant") against the Declarant and/or the Community Association, involving this Declaration or the Community, or all or any combination of such entities ("Respondent"), other than an Exempt Claim under Section 15.2 and unless waived in writing by Declarant and/or the Community Association, at its respective sole option and election, will not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures, and then only to enforce the results hereof:

15.3.1 Notice. Within a reasonable time after the Claim in question has arisen, and in each event prior to the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation, the Claimant will notify the Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

ME 358PG311

(a) the nature of the Claim, including date, time, location, persons involved, the Respondent's role in the Claim and the provisions of the Declaration or other authority out of which the Claim arises:

(b) what Claimant wants the Respondent to do or not do to resolve the Claim; and

(c) that Claimant wishes to resolve the Claim by mutual agreement with the Respondent and is willing to meet in person with the Respondent at a mutually agreeable time and place to discuss, in good faith, ways to resolve the Claim.

#### 15.3.2 Negotiation.

(a) Each Claimant and the Respondent (the "Parties") will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation, but not later than 30 days following the Notice, unless otherwise agreed by the Parties.

(b) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint an attorney licensed to practice law in the State of South Carolina to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties. Such attorney will have been actively engaged in the practice of law for at least fifteen (15) years, specializing in commercial transactions with substantial experience in planned real estate developments and will not have a conflict of interest with any of the Parties.

#### 15.3.3 Final and Binding Arbitration.

(a) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiation"), a Claimant will have 30 days within which to submit the Claim to binding arbitration under the auspices and the Commercial Arbitration Rules of the American Arbitration Association; and in accordance with the substantive and procedural laws of the state of South Carolina, except as said rules, procedures and substantive laws are applied otherwise as follows:

(i) Unless the parties mutually set another date, within ten (10) days following Termination of Negotiation, Claimant and Respondent will jointly select one arbitrator, whose decision will be absolutely binding on all Parties; provided, however, if Claimant and Respondent are unable to jointly select one arbitrator within said ten (10) -day period, or on or before any later day set by them by which to select an arbitrator, the arbitrator will be selected in accordance with the aforesaid Commercial Arbitration Rules of the American Arbitration Association. The arbitration will be conducted in Charleston, South Carolina before a neutral person who is a member of the Bar of the State of South Carolina, who has been actively engaged in the practice of law for at least fifteen (15) years, specializing in commercial transactions with substantial experience in planned real estate developments. The decision of the arbitrator will be absolutely



BKE 358PG312

binding on all Parties, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator may award any remedy or relief that a court of the State of South Carolina could order or grant, including, without limitation, specific performance of any obligation created under this Declaration, or the issuance of an injunction, as well as the imposition of sanctions for abuse or frustration of the arbitration process; provided, however, the arbitrator will have no authority to award punitive damages or any other damages not measured by the prevailing party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Declaration.

(ii) In the event the Claimant does not submit the Claim to binding arbitration as aforesaid, the Claim will be deemed abandoned, and Respondent will be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein will release or discharge Respondent from any liability to persons not a Party to the foregoing proceedings.

This Section 15.3 is an agreement of the Bound Parties to arbitrate all Claims against the Respondent, except Exempt Claims, and is specifically enforceable under South Carolina law. The arbitration award (the "Award") will be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest

#### 15.4 Allocation of Costs of Resolving Claims.

15.4.1 Costs of Notice and Negotiation. Each Party will bear all of its own costs incurred prior to and during the proceedings described in Sections 15.3.1 and 15.3.2, including the fees of its attorney or other representative.

15.4.2 Arbitration Costs. In the event the Claim proceeds to arbitration pursuant to Section 15.3.3, the "Prevailing Party," as hereinafter defined, will receive from the non-Prevailing Party, all of its costs and expenses, including reasonable expert and attorney's fees, incurred from commencement of selection of the arbitrator(s) under Section 15.3.3 to the issuance of the Award. Furthermore, the non-Prevailing Party will pay all costs and expenses of the arbitration. The "Prevailing Party" will be determined as follows:

(a) Not less than five (5) days prior to the first meeting with the arbitrator(s), a Party or Parties may file and serve on the other Party(ies) an offer of settlement, and within three (3) days thereafter the Party(ies) served may respond by filing and serving such Party(ies) its own offer of settlement. An offer of settlement will state that it is made under this section and will specify the amount, exclusive of interest and costs, which the Party(ies) serving the settlement offer is/are willing to agree constitutes a settlement of the Claim.

(b) An offer of settlement is considered rejected by the recipient unless an acceptance, in writing, is filed and served on the Party(ies) making the offer twenty-four (24) hours prior to the first meeting with the arbitrator(s).

BKE 358PG313

(c) If an offer of settlement is rejected, it may not be referred to for any purpose at arbitration, but may be considered solely for the purpose of awarding costs and expenses of arbitration under Section 15.3.3.

(d) If the Claimant makes no written offer of settlement, the amount of the Claim offered in arbitration is deemed to be the Claimant's final offer of settlement under this Section 15.4.2.

(e) If the Respondent makes no written offer of settlement, the Respondent's offer of settlement under this Section 15.4.2 is deemed to be zero.

(f) The Party(ies) whose offer, made or deemed made, is closer to the Award granted by the arbitrator(s) is considered the "Prevailing Party" hereunder. If the difference between the Claimant's and Respondent's offers and the Award is equal, neither Claimant nor Respondent is considered to be the Prevailing Party for purposes of determining the award of costs and expenses of arbitration.

15.5 Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation in accordance with Section 15.3.2 and any Party thereafter fails to abide by the terms of the agreement reached through negotiation, or if, following arbitration, any Party thereafter fails to comply with the Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 15.3. In such event, the Party taking action to enforce the agreement or Award will be entitled to recover from the noncomplying Party (or if more than one noncomplying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

15.6 Litigation. No judicial or administrative proceeding with an amount in controversy exceeding \$25,000.00, will be commenced or prosecuted by the Community Association unless approved by seventy-five percent (75%) of the votes cast by the Members present, in person or by proxy, and entitled to vote at a duly called meeting of the Members. This Section will not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitations, the foreclosure of liens); (b) the imposition and collection of Assessments; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section will not be amended unless such amendment is approved by the percentage of votes by members of the Board of Directors, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision will apply in addition to the negotiation and arbitration provisions of this Article 15, if applicable.

#### 15.7 Miscellaneous Alternative Dispute Resolution Provisions.

15.7.1 Conflicting Provisions. Any conflict or discrepancy between the terms and conditions set forth in this Article 15 and any term, condition or procedure of the American

ME 358PG314

Arbitration Association, or any remedy allowed at law, the terms, conditions, procedures and remedies set forth herein will control.

15.7.2 TIME IS OF ESSENCE. All periods of time set forth herein or calculated pursuant to provisions of this Article 15 will be strictly adhered to, TIME BEING OF THE ESSENCE hereof.

#### ARTICLE 16. GENERAL PROVISIONS

16.1 Control of Declarant. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BYLAWS OF THE COMMUNITY ASSOCIATION, Declarant hereby retains the right to appoint and remove any member or members of the Board of Directors of the Community Association and any officer or officers of the Community Association during the Declarant Control Period. Every grantee of any interest in the Community, by acceptance of a deed or other conveyance of such interest, agrees that Declarant will have the authority to appoint and remove directors and officers of the Community Association in accordance with the foregoing provisions of this Section 16.1. The provisions of this Section 16.1 are supplemental to, and not in substitution of, other rights retained by Declarant pursuant to this Declaration.

16.1.1 Voting Agreement and Proxy. By acceptance of a deed or other conveyance of a real estate interest subject hereto, an Owner-Member does hereby grant, and if further required, doe agree to vote in a manner to provide, to Declarant all voting rights and other corporate powers specifically reserved to and designated for Declarant under this Declaration. **IN CONNECTION WITH THIS VOTING AGREEMENT, EACH MEMBER APPOINTS DECLARANT AS PROXY FOR SUCH MEMBER WITH FULL POWER OF SUBSTITUTION TO VOTE FOR THE MEMBER ON ALL SUCH MATTERS ON WHICH THE MEMBER MAY BE ENTITLED TO VOTE, AND WITH RESPECT TO WHICH THERE IS A RESERVATION OR DESIGNATION OF VOTING RIGHTS IN DECLARANT UNDER THIS DECLARATION, AND WITH ALL POWERS WHICH THE MEMBER WOULD POSSESS IF PERSONALLY PRESENT AT ANY MEETING OF MEMBERS. SUCH APPOINTMENT WILL BE, UPON A MEMBER'S ACCEPTANCE OF A DEED OR OTHER CONVEYANCE AND WITHOUT THE NECESSITY OF FURTHER ACTION BY THE DECLARANT OR THE MEMBER, A POWER COUPLED WITH AN INTEREST AND IRREVOCABLE.** Such appointment will be effective as of the date on which a deed or other conveyance of an interest to the Owner-Member is filed Of Record. This irrevocable proxy will automatically terminate on the date Declarant's voting rights as a Type B Member terminate. The within voting agreement and proxy are in addition to, and not in substitution of, all rights of Declarant herein provided, which will run with the Property.

16.1.2 Creation of New Board. Upon the expiration of the Declarant Control Period, such right will pass to the Owners, including Declarant if Declarant then owns one or more properties subject to this Declaration, and a special meeting of the Community Association will be called within a reasonable time thereafter. At such special meeting the Owners will elect a new

BKE 358PG315

Board of Directors which will undertake the responsibilities of the Board of Directors, and Declarant will deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Community Association and any agreements or contracts executed by or on behalf of the Community Association during such period and which Declarant has in its possession.

16.2 Amendments by Declarant. During the Declarant Control Period, the Declarant may amend this Declaration by an instrument in writing filed Of Record without the approval of any Owner or Mortgagee; provided, however, that, with the exception of the addition of any portion of the Additional Property to the terms of this Declaration, (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Lot, Dwelling, or the Common Areas as set forth in this Declaration or adversely affects the title to any Lot and/or Dwelling, such amendment will be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby; (ii) in the event that such amendment would materially and adversely affect the security title and interest of any Mortgagee, such amendment will be valid only upon the written consent thereto of all such Mortgagees so affected; and (iii) in the event that such amendment also is an amendment to the Bylaws, the amendment will be adopted pursuant to the applicable procedures of the Act. Notwithstanding the foregoing to the contrary, the expiration or termination of the Declarant Control Period will not terminate Declarant's right to amend the Declaration for the purpose of submitting the Additional Property or any portion thereof to the provisions of this Declaration as provided in Section 2.2 hereof. Any amendment made pursuant to this Section 16.2 will be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees if required, and will be effective only upon it being filed Of Record or at such later date as will be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by amendments permitted by this Section 16.2 and further agrees that, if requested by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Community (b) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which will be in conflict therewith, (c) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any properties subject to this Declaration, (d) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any properties subject to this Declaration, or (e) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on the properties or other improvements subject to this Declaration.

16.3 Amendments by the Community Association. Amendments to this Declaration, other than those authorized by Section 16.2 hereof, will be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment will be included in the notice of the meeting of the Community Association at which such proposed amendment is to be considered and will be delivered to each Member of the Community Association.

BKE 358PG316

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or Members of the Community Association. Such amendment must be approved by the affirmative vote of Members present, in person or by proxy, entitled to vote and holding at least two-thirds (2/3) of the total votes in the Community Association, which percentage will also constitute the quorum required for any such meeting; provided, however, (i) that any amendment which materially and adversely affects the security title and interest of any Mortgagee must be approved by such Mortgagee; (ii) during the Declarant Control Period, such amendment must be approved by Declarant; and (iii) in the event that such amendment also is an amendment to the Bylaws, the amendment will be adopted pursuant to the applicable procedures of the Act.

(c) The agreement of the required percentage of the Owners and, where required, Declarant and any Mortgagee, to any amendment of this Declaration will be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President of the Community Association attached to or incorporated in the amendment executed by the Community Association, which sworn statement will state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration will become effective only when filed Of Record or at such later date as may be specified in the amendment itself.

Anything contained in this Section 16.3 to the contrary notwithstanding, no amendment under this Declaration shall be made, or any vote therefor effective, if the result or effect thereof would have a material adverse effect upon Declarant, without the prior written consent of the Declarant, including, but not limited to, any matter set forth in Sections 2.2.1, 2.3, 2.5, 2.6, 2.7, 6.21, 6.25, 6.27, 6.28, 6.29, 6.30, 6.31, 7.3.3, 7.4, 7.5, 7.6, 7.11, 7.14, 12.3.1, 13.7, 16.8, 16.9, and 16.14.

16.4 Duration. The provisions of this Declaration will run with and bind title to the Property, will be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors, and assigns, and will be and remain in effect for a period of thirty (30) years from and after the date this Declaration is filed Of Record, provided that rights and easements which are stated herein to have a longer duration will have such longer duration. Upon the expiration of said thirty (30)-year period, this Declaration will be automatically renewed for successive ten (10)-year periods. The number of ten (10)-year renewal periods will be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10)-year renewal period for an additional ten (10)-year period; provided, however, that there will be no renewal or extension of this Declaration, if, during the last year of an initial thirty (30)-year period or the last year of any ten (10)-year renewal period, seventy-five percent (75%) of the votes in the Community Association, by Members present, in person or by proxy and entitled to vote at a duly called meeting of the Members, are cast in favor of terminating this Declaration at the end of the then current term. In the event that the Community Association votes to terminate this Declaration, an instrument evidencing such termination will be filed of Record, such instrument to contain a certificate wherein the President of the Community Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration will run with and bind title to the Property as provided hereby.

BKE 358PG317

16.5 Termination of the Community Association. In the event that this Declaration is declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Community Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, and such adjudication occurs within ten (10) years following the date of recording this Declaration, all Common Area belonging to the Community Association at the time of such adjudication will revert to the Declarant, and the Declarant will own and operate said Common Areas as Trustee for use and benefit of Owners within the Property as set forth below. If said adjudication will occur on a date more than ten (10) years after the date of recording of this Declaration, or if the Members of the Community Association should vote not to renew and extend this Declaration as provided for in Section 16.4, all Common Areas owned by the Community Association at such time will be transferred to a properly appointed Trustee, which Trustee will own and operate said Common Areas for the use and benefit of Owners within the Property as set forth below:

(a) Each lot, parcel or tract of land located within the Property will be subject to an Annual Assessment which will be paid by the Owner thereof to the Declarant or Trustee, whichever becomes the successor in title to the Community Association. The amount of such Annual Assessment and its due date will be determined solely by the Declarant or the Trustee, as the case may be, but the amount of such Annual Assessment on any particular lot, parcel or tract of land will not exceed the amount actually assessed against that lot, parcel or tract of land in the last year that Assessments were levied by the Community Association, subject to the adjustment set forth in subparagraph (b) immediately below.

(b) The rate of the Annual Assessment which may be charged by the Declarant or Trustee hereunder on any particular lot or parcel may be automatically increased each year by either five (5%) percent or the percentage increase between the first month and the last month of the Annual Assessment period in the CPI-U issued by the U.S. Bureau of Labor Statistics in its monthly report, whichever of these two percentage figures is larger. The actual amount of such increase in the regular Annual Assessment on a parcel will equal the regular Annual Assessment on such lot or parcel for the previous year multiplied by the larger of the two percentage factors set forth above. If the CPI-U is discontinued, then there will be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.

(c) Any past due Annual Assessment together with interest thereon at the greater of fifteen (15%) percent or the maximum annual rate permitted by law from the due date and all costs of collection including reasonable attorney's fees will be a personal obligation of the Owner at the time that the Annual Assessment becomes past due, and it will also constitute and become a charge and continuing lien on the lot or parcel of land and all improvements thereon, against which the Assessment has been made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns.

(d) The Declarant, or the Trustee, as the case may be, will be required to use the funds collected as Annual Assessments for the operation, maintenance, repair and upkeep of the Common Areas. Declarant or Trustee may charge as part of the cost of such functions the reasonable

AKE 358PG318

value of its services in carrying out the duties herein provided. Neither the Declarant nor the Trustee will have the obligations to provide for operation, maintenance, repair and upkeep of the Common Areas once the funds provided by the Annual Assessment have been exhausted.

(e) The Declarant will have the right to convey title to the Common Areas and to assign its rights and duties hereunder, provided that the transferee accepts such properties subject to the limitations and uses imposed hereby and affirmatively acknowledges its acceptance of the duties imposed hereby.

(f) The Trustee will have the power to dispose of the Common Areas (subject to the limitations of Article 5), free and clear of the limitations imposed hereby; provided, however, that such disposition will first be approved in writing by fifty-one (51%) percent of the Owners of Property within the Property or in the alternative will be found, in the exercise of reasonable business judgment, to be in the best interest of the Owners of property within the Property. The proceeds of such a sale will first be used for the payment of any debts or obligations constituting a lien on the Common Areas, then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair and upkeep of such Property, then for the payment of any obligations distributed among the Owners of property within the Community, exclusive of the Trustees, in a proportion equal to the portion that the Maximum Annual Assessment on property owned by a particular Owner bears to the total Maximum Annual Assessment for all property located within the Property.

16.6 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration will be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions will continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Queen Elizabeth II, mother of Prince Charles of Great Britain.

16.7 Interpretation. In all cases, the provisions set forth or provided for in this Declaration will be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors will best effect the intent of the general plan of development. The provisions hereof will be liberally interpreted and, if necessary, they will be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration will be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration will be the date of its filing Of Record. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration will be construed under and in accordance with the laws of the State of South Carolina.

16.8 No Affirmative Obligation Unless Stated. **ANY RESERVATION OR RIGHT OF THE DECLARANT WHICH IS STATED IN OR IMPLIED FROM THIS DECLARATION WILL NOT GIVE RISE TO ANY AFFIRMATIVE OBLIGATION OR DUTY ON THE PART OF THE DECLARANT UNLESS EXPRESSLY STATED IN THIS DECLARATION.**

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16.9 No Implied Liabilities or Duties. ANY RULES OR REGULATIONS ESTABLISHED BY THE DECLARANT PURSUANT TO THIS DECLARATION WILL NOT EXPRESSLY OR IMPLIEDLY CREATE ANY DUTY OF CARE TO ANY PROPERTY OWNER.

16.10 Gender and Grammar. The singular wherever used herein will be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, will in all cases be assumed as though in each case fully expressed.

16.11 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property will be prohibited or held invalid, such prohibition or invalidity will not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

16.12 Rights of Third Parties. This Declaration will be filed Of Record for the benefit of Declarant, the Owners, and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party will have any right, title or interest whatsoever in the Community, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Declarant and Mortgagees as herein provided, the Owners will have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

16.13 Notice of Sale, Lease, or Mortgage. In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot, the Owner must promptly furnish to the Community Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

16.14 No Trespass. Whenever the Community Association, Declarant, the Architectural Review Board, and their respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon, correct, repair, clean, maintain, preserve, or do any other action within any portion of the Community, the entering thereon and the taking of such action will not deem to be trespass.

16.15 Notices. Notices required hereunder will be in writing and will be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners will be delivered or sent to such addresses as have been designated in writing to the Community Association, or if no address has been so designated, at the addresses of such Owners' respective Lots. All notices to the Community Association will be delivered or sent in care of Declarant to Declarant's main office, 3690 Bohicket Road, Suite 4-B, John's Island, South Carolina 29455 or to such other address as the Community Association may from time to time notify the Owners. All notices to Declarant will be delivered or sent to Declarant's main office, 3690 Bohicket Road, Suite 4-B, John's Island, South Carolina 29455, or to such other address as Declarant may from time to time notify the Community Association. Notices to Mortgagees will be delivered or sent to such addresses as such Mortgagees



specify in writing to the Community Association. Notices to any other person or persons entitled to same hereunder will be delivered or sent to such address or addresses as such person or persons specify, from time to time, in writing to the sender, or, in the absence thereof, to such address or addresses as will, in the exercise of reasonable judgment by the sender, reasonably expected to be received by such person or persons.

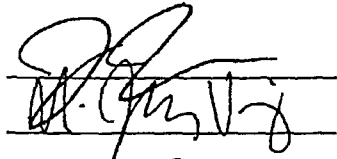
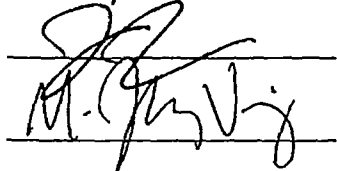
IN WITNESS WHEREOF, duly authorized officers of the undersigned Declarant have executed this Declaration under seal, this 31<sup>st</sup> day of October, 2000.

DECLARANT:

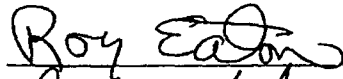
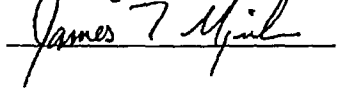
BRIAR'S CREEK GOLF, LLC

By: Briar's Creek Management, Inc., its Manager

Signed, sealed and  
delivered in the  
presence of:

  
Roy Eaton  
  
James T. Myrick

Signed, sealed and  
delivered in the  
presence of:

  
Roy Eaton  
  
James T. Myrick

By:   
Steven J. Koenig, President

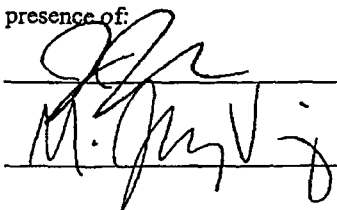
  
Steven J. Koenig, Individually

  
Edward L. Myrick, Individually

## ASSOCIATION ACKNOWLEDGMENT

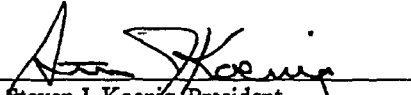
The undersigned Officer of The Golf Club at Briar's Creek Property Owners Association, in behalf of itself and its existing and future Members of the Community Association, does hereby acknowledge the foregoing Covenants, Conditions And Restrictions For The Golf Club at Briar's Creek, consenting to all the terms and conditions thereof and agreeing to be bound thereby.

Signed, sealed and  
delivered in the  
presence of:



M. J. V. J.

THE GOLF CLUB AT BRIAR'S CREEK  
PROPERTY OWNERS ASSOCIATION, INC.

By:   
Steven J. Koenig, President

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STATE OF SOUTH CAROLINA    )  
   ) ACKNOWLEDGMENT  
 COUNTY OF CHARLESTON        )

The foregoing instrument was acknowledged before me this 31st day of October, 2000, by  
 Briar's Creek Golf, LLC, by Briar's Creek Management, Inc., by Steven J. Koenig, its  
President.

M. G. M. V. J. (SEAL)  
 Notary Public for South Carolina  
 My Commission Expires: 11-15-06

STATE OF SOUTH CAROLINA    )  
   ) ACKNOWLEDGMENT  
 COUNTY OF CHARLESTON        )

The foregoing instrument was acknowledged before me this 31st day of October, 2000, by  
 Steven J. Koenig.

M. G. M. V. J. (SEAL)  
 Notary Public for South Carolina  
 My Commission Expires: 11-15-06

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STATE OF Georgia )  
COUNTY OF Sumter ) ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 30 day of October, 2000, by Edward L. Myrick.

Edward L. Bentley (SEAL)  
Notary Public for Sumter County  
My Commission Expires: \_\_\_\_\_  
Notary Public, Sumter County, Georgia  
My Commission Expires March 15, 2004

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STATE OF SOUTH CAROLINA     )  
  ) ACKNOWLEDGMENT  
COUNTY OF CHARLESTON     )

The foregoing instrument was acknowledged before me this 31st day of October, 2000, by  
The Golf Club at Briar's Creek Property Owners Association, Inc., by Steven J. Koenig,  
its President.

M. J. V. J. (SEAL)  
Notary Public for South Carolina  
My Commission Expires: 11-15-06

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## Exhibit "A"

Golf Course Tract:

All of that certain piece, parcel or tract of land lying and being on Johns Island, South Carolina designated as Tract "C" containing 301.33 acres as shown on that certain plat entitled "PLAT SHOWING SUBDIVISION OF 816.34 ACRES TO CREATE TRACTS A, B, & C, BRIAR'S CREEK GOLF Club", by Thomas & Hutton Engineering Co., dated January 26, 2000 and recorded October 30, 2000 in Plat Book EE, pages 414 - 420, Charleston County RMC Office, reference to which is craved for a more complete description.

Myrick Tract

All of that certain piece, parcel or tract of land lying and being on Johns Island, South Carolina designated as Tract "B" as shown on that certain plat entitled "PLAT SHOWING SUBDIVISION OF 816.34 ACRES TO CREATE TRACTS A, B, & C, BRIAR'S CREEK GOLF Club", by Thomas & Hutton Engineering Co., dated January 26, 2000 and recorded October 30, 2000 in Plat Book EE, pages 414 - 420, Charleston County RMC Office reference to which is craved for a more complete description.

Less and Except:

Parcel I: All that certain piece, parcel or tract of land situate, lying and being in Johns Island, Charleston County, in the state aforesaid, measuring and containing twenty (20) acres, more or less, butting and bounding to the north by River Road and lots now or formerly of Williams Gaillard, Jr. (TMS No. 260-00-00-009) and Lillian Estelle Saunders (TMS No. 260-00-00-009) and lands now or formerly of Jerry E. Cumbee (TMS No. 259-00-00-027), Charles L. Wiggins, et al (TMS No. 259-00-00-029) and Tyronne Taylor (TMS #259-00-00-030); to the south by land now or formerly of Robert S. Berry (TMS No. 260-00-00-005) and to the west by lands of Irving Robinson (TMS No. 260-00-00-008).

Parcel II: All that piece, parcel or tract of land situate, lying and being on Johns Island, Charleston COUNTY, in the state aforesaid, measuring and containing thirty-six (36) acres, more or less, butting and bounding north on the Cocked Hat public Road; east on the tract of land designated in the plat hereinafter referred to; south on land now or late of Frank Y. Legare; and west on the Blackground Road, which said piece, parcel or tract of land is a part of the said Richfield Plantation and is more particularly represented by a plat thereof drawn by Frederick Smit, Engineer and Architect, made April, 1981, and whereon the piece or parcel of land hereby conveyed is designated by the letter A. Reference thereto being had will more fully and at large appear.

## Exhibit "A"

Koenig Tract:

Parcel I: All that certain piece, parcel or tract of land situate, lying and being in Johns Island, Charleston COUNTY, in the state aforesaid, measuring and containing twenty (20) acres, more or less, butting and bounding to the north by River Road and lots now or formerly of Williams Gaillard, Jr. (TMS No. 260-00-00-009) and Lillian Estelle Samders (TMS No. 260-00-00-009) and lands now or formerly of Jerry E. Cumbee (TMS No. 259-00-00-027), Charles L. Wiggins, et al (TMS No. 259-00-00-029) and Tyrone Taylor (TMS #259-00-00-030); to the south by land now or formerly of Robert S. Berry (TMS No. 260-00-00-005) and to the west by lands of Irving Robinson (TMS No. 260-00-00-008).

Parcel II: All that piece, parcel or tract of land situate, lying and being on Johns Island, Charleston COUNTY, in the state aforesaid, measuring and containing thirty-six (36) acres, more or less, butting and bounding north on the Cocked Hat public Road; east on the tract of land designated in the plat hereinafter referred to; south on land now or late of Frank Y. Legare; and west on the Blackground Road, which said piece, parcel or tract of land is a part of the said Richfield Plantation and is more particularly represented by a plat thereof drawn by Frederick Smit, Engineer and Architect, made April, 1981, and whereon the piece or parcel of land hereby conveyed is designated by the letter A. Reference thereto being had will more fully and at large appear.

Together with:

Parcel I: All that piece, parcel or tract of land situate, lying and being on Johns Island, in the COUNTY of Charleston, State of South Carolina, measuring and containing 26.81 acres, more or less.

Butting and bounding to the north on lands now or late of D. Mathews and on a strip of land conveyed to John Dais; to the east on said strip of land conveyed to John Dais by Uldric A. Turner, and on Yellow House Tract, and bing now or formerly of E. B. Bragon, and to the south on lands now or formerly of Frank Y. Legare; and to the west on a tract of land designated "L" on the plat herein referred to, which said piece, parcel or tract of land is a part of said Richfield Plantation and is more particularly represented by a plat thereof drawn by Frederick J. Smith, Engineer, April 1881, and whereon piece or parcel of land hereby conveyed is designated by the letter "M", reference thereto being and will more fully appear. This being an original tract of 36.81 acres of which ten acres was conveyed to John Dais by Toney Murray. The property is more accurately shown on that plat of W. L. Gaillard, Surveyor, dated March 11, 1957, containing 27 acres entitled "MAP OF TRACT OF LAND ABOUT TO BE CONVEYED TO JOHN D. BENDT AND WILHELMINA BENDT" which plat was recorded with the deed recorded on April 6, 1957, in Book F 64, page 204, RMC Office for Charleston County.

The property is more currently described as being bounded on the north by lands of the estate of John Gaillard (TMS No. 259-00-00-048) and James J. Gaillard (TMS No. 259-00-00-105); on the east by lands of Emma Deas (TMS no. 259-00-00-052) and on the west by lands of H. Ben Walpole, Jr. to be conveyed to Grayson C. Knight and Midred T. Knight (TMS No. 259-00-00-049).

Parcel II: All that tract of land, situate, lying and being on Johns Island, in the County of Charleston, State of South Carolina, measuring and containing 77.2 acres, more or less, which tract has such butting and bounding as are shown on a plat made by J. O'Hear Sanders, Jr., dated January 17, 1967, and recorded in the RMC Office for Charleston County in Plat Book V at page 135, which premises are containing within the lines designated as Letters A, B, C, D, E, F, G, H, J, K, L, M, and A.

The property is more generally described as being bounded on the North by lands of the Estate of John Gaillard (TMS No. 259-00-00-048) and Morris Lee Jackson (TMS No. 259-00-00-050); on the east by lands of Grayson C. Knight and Mildred Knight (TMS no. 259-00-00-051); on the west by lands of Jacob Brown and Christopher Brown, JR. as Trustee (TMS No. 259-00-00-047), Christopher Brown, Jr. and Marie H. Brown (TMS No. 259-00-00-093) and Jacob Brown (TMS No. 259-00-00-092).